THE GENERAL STATUTES OF NORTH CAROLINA

ANNOTATED

1995 CUMULATIVE SUPPLEMENT

Volume 17

Chapters 117 through 129

Prepared under the Supervision of

The Department of Justice
of the State of North Carolina

BY

The Editorial Staff of the Publishers

Under the Direction of

D. S. Tussey, K. S. Mawyer, K. J. Kennedy
and F. J. Payne

Annotated through 457 S.E.2d 524. For complete scope of annotations, see scope of volume page.

Place Behind Supplement Tab in Binder Volume. This Supersedes Previous Supplement, Which May Be Retained for Reference Purposes.

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Preface

This Cumulative Supplement to Volume 17 contains the general laws of a permanent nature enacted by the general Assembly through the 1995 Regular Session, which are within the scope of such volume, and brings to date the annotations included therein.

Amendments are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings.

Chapter analyses show all affected sections, except sections for which catchlines are carried for the purposes of notes only. An index to all statutes codified herein will appear in the Replacement Index Volumes.

A majority of the Session Laws are made effective upon ratification, but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after 30 days after the adjournment of the session" in which passed.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute is cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P. O. Box 629, Raleigh, N.C. 27602.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Cumulative Supplement and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to The Michie Company, Law Publishers, Charlottesville, Virginia.

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User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the North Carolina General Statutes, a User's Guide has been included in Volume 1. This guide contains comments and information on the many features found within the General Statutes intended to increase the usefulness of this set of laws to the user. See the main volume for the complete User's Guide.

Scope of Volume

Statutes:

Permanent portions of the General Laws enacted by the General Assembly through the 1995 Regular Session affecting Chapters 117 through 129 of the General Statutes.

Annotations:

Sources of the annotations to the General Statutes appearing in this volume are:

North Carolina Reports through Volume 340, p. 364.
North Carolina Court of Appeals Reports through Volume 118, p. 737.
South Eastern Reporter 2nd Series through Volume 457, p. 524.
Federal Reporter 3rd Series through Volume 53, p. 349.
Federal Supplement through Volume 882, p. 1100.
Federal Rules Decisions through Volume 160, p. 664.
Bankruptcy Reports through Volume 181, p. 677.
Supreme Court Reporter through Volume 115, p. 2020.
North Carolina Law Review through Volume 73, p. 1760.
Wake Forest Law Review through Volume 30, p. 426.
Campbell Law Review through Volume 17, p. 163.
Duke Law Journal through Volume 44, p. 1049.
North Carolina Central Law Journal through Volume 21, p. 178.
Opinions of the Attorney General.

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ARTICLE 2A.

Regulation of Rerefined or Reprocessed Oil.

§ 119-13.1. Definitions.

As used in this Article:

(1) "Lubricating oil" means any oil classified for the use in an internal combustion engine, hydraulic system, gear box, differential, or wheel bearings.

(1a) "Recycled oil" means any oil prepared from used oil for energy recovery or reuse as a petroleum product by reclaiming, reprocessing, rerefining, or other means that use properly treated used oil as a substitute for petroleum products.

(1b) "Rerefined oil" means used oil that is refined to remove the physical and chemical contaminants acquired through use and that, by itself or when blended with new lubricating oil or additives, meets applicable American Petroleum Institute (A.P.I.) service classifications.

(2) "Specifications" means the minimum chemical properties or analysis as determined by the American Society for Testing Materials (A.S.T.M.) test methods using current ASTM analytical procedures.

(3) "Used oil" means any oil that has been refined from crude or synthetic oil and, as a result of use, storage, or handling

becomes unsuitable for its original purpose due to the loss of its original properties or the presence of impurities, but that may be rerefined for further use. (1953, c. 1137; 1979, c. 158, s. 1; 1995, c. 516, s. 1.)

Editor's Note. — The definitions in this section were placed in alphabetical order at the direction of the Revisor of Statutes.

Effect of Amendments. — The 1995 amendment, effective October 1, 1995, and applicable to violations occurring on or after that date, redesignated former subdivision (1) as present subdivision (1a); added present subdivision (1); rewrote subdivision (1a); and added subdivisions (1b) and (3).

§ 119-13.2. Labels required on sealed containers; oil to meet minimum specifications.

(a) It shall be unlawful to offer for sale or sell or deliver in this State previously used oil that has not been rerefined or recycled oil that has not been rerefined, as defined in G.S. 119-13.1, in a sealed container unless this container be labeled or bear a label on which shall be expressed the brand or trade name of the oil and the words "made from previously used lubricating oil"; the name and address of the person, firm, or corporation that has rerefined or reprocessed said oil or placed it in the container; the Society of Automotive Engineers (S.A.E.) viscosity grade; the net contents of the container expressed in U.S. liquid measure of quarts, gallons, or pints; which label has been registered and approved by the Gasoline and Oil Inspection Division of the Department of Agriculture; and that the oil in each container shall meet the minimum specifications. The Gasoline and Oil Inspection Board shall adopt minimum quality specifications, the measurement of which shall be accomplished using current A.S.T.M. analytical procedures.

(b) A person may represent a product made in whole or in part from rerefined oil to be substantially equivalent to a product made from virgin oil for a particular end use if the product conforms with the applicable American Petroleum Institute (A.P.I.) service classifications. (1953, c. 1137; 1979, c. 158, s. 2; 1995, c. 516, s. 2.)

Effect of Amendments. — The 1995 amendment, effective October 1, 1995, and applicable to violations occurring on or after that date, added the subsection designation (a); in subsection (a) substituted "previously used oil that has not been rerefined or recycled oil that has not been rerefined, as defined in G.S. 119-13.1" for "rerefined or reprocessed oil, as hereinbefore defined", "that" for "who" following "corporation", and "grade" for "number" following "viscosity"; and added subsection (b).

§ 119-13.3. Violation a misdemeanor.

Any person, firm, or corporation violating any of the provisions of this Article shall for each offense be guilty of a Class 1 misdemeanor. For a second or subsequent offense, the person shall also be enjoined from selling or distributing previously used oil for not less than one year nor more than five years. (1953, c. 1137; 1993, c. 539, s. 901; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 516, s. 3.)

Effect of Amendments. — The 1995 amendment, effective October 1, 1995, and applicable to violations occurring on or after that date, added the second sentence.

ARTICLE 3.

Gasoline and Oil Inspection.

§ 119-15. Definitions that apply to Article.

The following definitions apply in this Article:

(1) Alternative fuel. — Defined in G.S. 105-449.130.
(2) Gasoline. — Defined in G.S. 105-449.60.
(3) Kerosene. — Petroleum oil that is free from water, glue, and suspended matter and that meets the specifications and standards adopted by the Gasoline and Oil Inspection Board.
(4) Motor fuel. — Defined in G.S. 105-449.60.
(5) Person.— Defined in G.S. 105-229.90. (1937, c. 425, s. 2; 1995, c. 390, s. 19.)

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, rewrote this section.

§§ 119-16, 119-16.1: Repealed by Session Laws 1995, c. 390, ss. 20 and 21.

§ 119-16.2. Application for license.

A person may not engage in business as a kerosene distributor unless the person is licensed as a supplier or a distributor under Part 2 of Article 36C of Chapter 105 of the General Statutes or has a kerosene license issued under this section. To obtain a license under this section, an applicant must file an application with the Secretary of Revenue on a form provided by the Secretary and file with the Secretary a bond in the amount required by the Secretary, not to exceed twenty thousand dollars ($20,000). An applicant must give the Secretary the same information the applicant would be required to give under Part 2 of Article 36C of Chapter 105 of the General Statutes if the applicant were applying for a license under that Part. A bond filed under this section must be conditioned on compliance with this Article, be payable to the State, and be in the form required by the Secretary. A license issued under this section remains in effect until surrendered or canceled, must be displayed in the same manner as a license issued under Part 2 of Article 36C of Chapter 105 of the General Statutes, and is subject to the same restrictions as a license issued under that Part. A person who fails to comply with this section is guilty of a Class 1 misdemeanor. (1967, c. 1110, s. 12; 1973, c. 476, s. 193; 1993, c. 539, s. 902; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 745, s. 29; 1995, c. 390, s. 22.)

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, substituted "is licensed as a supplier or a distributor under Part 2 of Article 36C of Chapter 105 of the General Statutes or has" for "has either a license issued under G.S. 105-433 or" in the first sentence, and in the third and fifth sentences substituted "Part 2 of Article 36C of Chapter 105 of the General Statutes" for "G.S. 105-433", and substituted "Part" for "section" at the end of both sentences.

§ 119-18. Inspection tax and distribution of the tax proceeds.

(a) Tax. — An inspection tax of one fourth of one cent (¼ of 1¢) per gallon is levied upon all kerosene, motor fuel, and alternative fuel. The inspection tax on motor fuel is due and payable to the Secretary of Revenue at the same time that the per gallon excise tax on motor fuel is due and payable under Article 36C of Chapter 105 of the General Statutes. The inspection tax on alternative fuel is due and payable to the Secretary of Revenue at the same time that the excise tax on alternative fuel is due and payable under Article 36D of Chapter 105 of the General Statutes. The inspection tax on kerosene is payable monthly to the Secretary by a distributor required to be licensed under G.S. 119-16.2. A monthly report by a distributor required to be licensed under G.S. 119-16.2 is due by the 20th of each month and applies to kerosene received by the distributor during the preceding month.

(b) Proceeds. — The proceeds of the inspection tax levied by this section shall be applied first to the costs of administering this Article and Subchapter V of Chapter 105 of the General Statutes. The remainder of the proceeds shall be credited on a monthly basis to the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund and the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund. If the amount of revenue in the Noncommercial Fund at the end of a month is at least five million dollars ($5,000,000), one-half of the remainder of the proceeds shall be credited to the Noncommercial Fund and one-half of the remainder of the proceeds shall be credited to the Commercial Fund. If the amount of revenue in the Noncommercial Fund at the end of a month is less than this threshold amount, all of the remainder of the proceeds shall be credited to the Noncommercial Fund.

(c) No Local Tax. — No county, city, or town shall impose any inspection charge, tax, or fee, in the nature of the charge prescribed by this section, upon kerosene and motor fuel. (1917, c. 166, s. 4; C.S., s. 4856; 1933, c. 544, s. 5; 1937, c. 425, s. 5; 1967, c. 1110, s. 12; 1973, c. 476, s. 193; 1985, c. 602, s. 2; 1991, c. 636, s. 12; 1991 (Reg. Sess., 1992), c. 913, s. 12; 1993, c. 402, s. 8; 1995, c. 390, s. 23.)

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, in subsection (a) substituted "motor fuel, and alternative fuel" for "and motor fuel" in the first sentence, substituted "Article 36C" for "Articles 36 and 36A" in the second sentence, and added the third sentence.

§ 119-19. Authority of Secretary to cancel a license.

The Secretary of Revenue may cancel a license issued under G.S. 119-16.2 upon the written request of the license holder. The Secretary may summarily cancel a license issued under G.S. 119-16.2 or Article 36C or 36D of Chapter 105 of the General Statutes when the Secretary finds that the license holder is incurring liability for the tax imposed by this Article after failing to pay a tax when due under this Article. The Secretary may cancel the license of a license holder who files a false report under this Article or fails to file a report required under this Article after holding a hearing on whether the license should be cancelled.

The Secretary must send a person whose license is summarily cancelled a notice of the cancellation and must give the person an opportunity to have a hearing on the cancellation within 10 days after the cancellation. The Secretary must give a person whose license may be cancelled after a hearing at least 10 days' written notice of the date, time, and place of the hearing. A notice of a summary license cancellation and a notice of hearing must be sent by registered mail to the last known address of the license holder.

When the Secretary cancels a license and the license holder has paid all taxes and penalties due under this Article, the Secretary must either return to the license holder the bond filed by the license holder or notify the person liable on the bond and the license holder that the person is released from liability on the bond. (1933, c. 544, s. 10; 1967, c. 1110, s. 12; 1973, c. 476, s. 193; 1995, c. 390, s. 24.)

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, rewrote the catchline of this section, which formerly read "Failure to report or pay tax; cancellation of license", and rewrote the text of this section.

§ 119-22: Repealed by Session Laws 1995, c. 390, s. 25, effective January 1, 1996.

§ 119-39.1. Civil Penalties.

The Commissioner of Agriculture may assess a civil penalty of not more than five thousand dollars ($5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation. (1995, c. 516, s. 4.)

Editor's Note. — Session Laws 1995, c. 516, s. 17, provides that this section is effective October 1, 1995, and is applicable to violations occurring on or after that date.

Chapter 120.

General Assembly.

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Apportionment of Members; Compensation and Allowances.

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120-74. Appointment of members; terms of office.

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Part 3. Legislative Ethics Committee.

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120-131.1. Requests from legislative employees for assistance in the preparation of fiscal notes.
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120-149.3. Assessment of new licensing boards.

Article 19.

Commission on Agriculture, Forestry, and Seafood Awareness.

120-150. (Applicable January 1, 1997) Creation; appointment of members.

Article 22.

The Public Health Study Commission.

120-196. (See editor's note) Commission duties.

ARTICLE 1.

Apportionment of Members; Compensation and Allowances.

§ 120-2.2. Dividing precincts in Senate and House apportionment acts restricted.

(a) An act of the General Assembly that apportions Senate or House districts after the return of a census may not divide precincts unless an act that apportioned Senate or House districts after the return of that same census has been rejected by the United States Department of Justice or the District Court for the District of Columbia under section 5 of the Voting Rights Act of 1965.

(b) If an act that apportioned Senate or House districts has been rejected by the United States Department of Justice or the District Court for the District of Columbia under section 5 of the Voting Rights Act of 1965, then a subsequent act may only divide the minimum number of precincts necessary to obtain approval of the act under section 5 of the Voting Rights Act of 1965.

(c) This section does not prevent the General Assembly from taking any action to comply with federal law or the Constitution of the United States. (1995, c. 355, s. 1; c. 509, s. 135.2(h).)

Editor's Note. — This section was originally enacted by Session Laws 1995, c. 355, s. 1, as G.S. 120-2.1, effective June 29, 1995. Session Laws 1995, c. 590, s. 135.2(h), recodified this section as G.S. 120-2.2, effective July 29, 1995.

§ 120-3. Pay of members and officers of the General Assembly.

(a) The Speaker of the House shall be paid an annual salary of thirty-eight thousand one hundred fifty-one dollars ($38,151) payable monthly, and an expense allowance of one thousand four hundred thirteen dollars ($1,413) per month. The President Pro Tempore of the Senate shall be paid an annual salary of thirty-eight thousand one hundred fifty-one dollars ($38,151) payable monthly, and an expense allowance of one thousand four hundred thirteen dollars (1,413) per month. The Speaker Pro Tempore of the House shall be paid an annual salary of twenty-one thousand seven hundred thirty-nine dollars ($21,739) payable monthly, and an expense allowance of eight hundred thirty-six dollars (836.00) per month. The Deputy President Pro Tempore of the Senate shall be paid an annual salary of twenty-one thousand seven hundred thirty-nine dollars ($21,739) payable monthly, and an expense allowance of eight hundred thirty-six dollars ($836.00) per month. The majority and minority leaders in the House and the majority and minority leaders in the Senate shall be paid an annual salary of seventeen thousand forty-eight dollars ($17,048) payable monthly, and an expense allowance of six hundred sixty-six dollars ($666.00) per month.

(b) Every other member of the General Assembly shall receive increases in annual salary only to the extent of and in the amounts equal to the average increases received by employees of the State, effective upon convening of the next Regular Session of the General Assembly after enactment of these increased amounts, except no such increase is granted upon the convening of the 1997 Regular Session of the General Assembly. Accordingly, upon convening of the 1997 Regular Session of the General Assembly, every other member of the General Assembly shall be paid an annual salary of thirteen thousand nine hundred fifty-one dollars ($13,951) payable monthly, and an expense allowance of five hundred fifty-nine dollars ($559.00) per month.

(c) The salary and expense allowances provided in this section are in addition to any per diem compensation and any subsistence and travel allowance authorized by any other law with respect to any regular or extra session of the General Assembly, and service on any State board, agency, commission, standing committee and study commission. (1929, c. 2, s. 1; 1951, c. 23, s. 1; 1965, c. 917; c. 1157, s. 1; 1967, c. 1120; 1969, c. 1278, s. 1; 1971, c. 1200, s. 5; 1973, c. 1482, s. 1; 1977, 2nd Sess., c. 1249, ss. 1, 2; 1979, 2nd Sess., c. 1137, s. 9.1; 1983, c. 761, s. 203; 1983 (Reg. Sess., 1984), c. 1034, s. 209; 1985, c. 479, s. 208; 1985 (Reg. Sess., 1986), c. 1014, s. 29; 1987, c. 738, s. 15; c. 830, s. 70; 1987 (Reg. Sess., 1988), c. 1086, s. 9; 1989, c. 752, s. 26;

1991 (Reg. Sess., 1992), c. 900, s. 35; 1993, c. 321, s. 52; 1993 (Reg. Sess., 1994), c. 769, s. 7.5; 1995, c. 507, s. 7.8.)

Editor's Note. —

Session Laws 1995, c. 358, s. 2(a), as amended by Session Laws 1995, c. 437, s. 1, and by Session Laws 1995, c. 467, s. 1, provides that the salaries established by Session Laws 1993, c. 769, s. 7.5, shall remain until July 28, 1995, at the level set by or under that section as of June 30, 1995; and that no State employee or officer may prior to July 28, 1995, receive a merit increase or annual increment.

Session Laws 1995, c. 507, s. 1.1, provides that that act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

Effect of Amendments. —

The 1995 amendment, effective July 1, 1995, in subsection (b) added "except no such increase is granted upon the convening of the 1997 Regular Session of the General Assembly" in the first sentence, and substituted "1997" for "1995" in the second sentence.

ARTICLE 1A.

Legislative Retirement System.

§ 120-4.22A. Post-retirement increases in allowances.

(a) Retired members and beneficiaries of the Retirement System shall receive post-retirement increases in allowances on the same basis as post-retirement increases in allowances are provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System.

(b) In accordance with subsection (a) of this section, from and after July 1, 1986, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1986, shall be increased by the same amount as provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System pursuant to the provisions of G.S. 135-5(ii) and (jj).

(c) In accordance with subsection (a) of this section, from and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1987, shall be increased by the same amount as provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System pursuant to the provisions of G.S. 135-5(ii) and (jj).

(d) In accordance with subsection (a) of this section, from and after July 1, 1988, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1988, shall be increased by the same amount as provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System pursuant to the provisions of G.S. 135-5(*ll*) and (mm).

(e) In accordance with subsection (a) of this section, from and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1989, shall be increased by the same amount as provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System pursuant to the provisions of G.S. 135-5(*ll*) and (mm).

(f) In accordance with subsection (a) of this section, from and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1990, shall be increased by the same amount as provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System pursuant to the provisions of G.S. 135-5(rr) and (ss).

(g) In accordance with subsection (a) of this section, from and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1992, shall be increased by one and six-tenths percent (1.6%) of the allowance payable on July 1, 1992. Furthermore, from and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1992, but before June 30, 1992, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1992 and June 30, 1992.

(h) In accordance with subsection (a) of this section, from and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1993, shall be increased by one and six-tenths percent (1.6%) of the allowance payable on January 1, 1993. Furthermore, from and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1993, but before June 30, 1993, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1993, and June 30, 1993.

(i) In accordance with subsection (a) of this section, from and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1994, shall be increased by three and one-half percent (3.5%) of the allowance payable on January 1, 1994. Furthermore, from and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1994, but before June 30, 1994, shall be increased by a prorated amount of three and one-half percent (3.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1994, and June 30, 1994.

(j) In accordance with subsection (a) of this section, from and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1995, shall be increased by two percent (2%) of the allowance payable on January 1, 1995. Furthermore, from and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1995, but before June 30, 1995, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1995, and June 30, 1995. (1985 (Reg. Sess., 1986), c. 1014, s. 49(c); 1987, c. 738, s. 27(d); 1987 (Reg. Sess., 1988), c. 1086, s. 22(d); 1989, c. 752, s. 41(d); 1989 (Reg.

Sess., 1990), c. 1077, s. 11; 1991 (Reg. Sess., 1992), c. 900, s. 53(d); 1993, c. 321, s. 74(a); 1993 (Reg. Sess., 1994), c. 769, s. 7.30(k); 1995, c. 507, s. 7.22(c).)

Editor's Note. — Session Laws 1995, c. 507, s. 1.1, provides that that act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, added subsection (j).

§ 120-4.31. Internal Revenue Code compliance.

(a) Notwithstanding any other provisions of law to the contrary, compensation for any calendar year after 1988 in which employee or employer contributions are made and for which annual compensation is used for computing any benefit under this Article shall not exceed the higher of two hundred thousand dollars ($200,000) or the amount determined by the Commissioner of Internal Revenue as the limitation for calendar years after 1989; provided the imposition of the limitation shall not reduce a member's benefit below the amount determined as of December 31, 1988.

Effective January 1, 1996, the annual compensation of a member taken into account for determining all benefits provided under this Article shall not exceed one hundred fifty thousand dollars ($150,000), as adjusted pursuant to section 401(a)(17)(B) of the Internal Revenue Code and any regulations issued under the Code. However, with respect to a person who became a member of the Retirement System prior to January 1, 1996, the imposition of this limitation on compensation shall not reduce the amount of compensation which may be taken into account for determining the benefits of that member under this Article below the amount of compensation which would have been recognized under the provisions of this Article in effect on July 1, 1993.

(b) Notwithstanding any other provisions of law to the contrary, the annual benefit payable on behalf of a member shall, if necessary, be reduced to the extent required by Section 415(b) and (e) of the Internal Revenue Code, as adjusted by the Secretary of the Treasury or his delegate pursuant to Section 415(d) of the Code. If a member is a participant under any qualified defined contributions plan that is required to be taken into account for the purposes of the limitation contained in Section 415 of the Internal Revenue Code, the annual benefit payable under this Article shall be reduced to the extent required by Section 415(e) prior to making any reduction under the defined contribution plan provided by the employer.

(c) On and after January 1, 1989, the retirement allowance of a member who has terminated employment shall begin no later than the later of April 1 of the calendar year following the calendar year that the member attains 70 ½ years of age or April 1 of the calendar year following the calendar year in which the member terminates employment.

(d) This subsection applies to distributions made on or after January 1, 1993. Notwithstanding any other provision of the Plan to the contrary that would otherwise limit a distributee's election under this Article, a distributee may elect, at the time and in the manner prescribed by the Plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. Provided, an eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of 10 years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net realized appreciation with respect to employer securities). Provided, an eligible retirement plan is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code, or a qualified trust described in section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. However, in case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or an individual retirement annuity. Provided, a distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code, or a court ordered equitable distribution of marital property, as provided under G.S. 50-20, whichever may be applicable, are distributees with regard to the interest of the spouse or former spouse. Provided further, a direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee. (1989, c. 276, s. 1; 1993, c. 531, s. 2; 1995, c. 361, s. 4.)

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, added the second paragraph in subsection (a).

ARTICLE 2.

Duty and Privilege of Members.

§ 120-6.1. (Effective January 1, 1997, contingent on approval of proposed constitutional amendment) Request that reconvened session not be held.

(a) As provided by Section 22(7) of Article II of the Constitution of North Carolina, if within 30 days after adjournment, a bill is returned by the Governor with objections and veto message to that house in which it shall have originated, the Governor shall reconvene that session as provided by Section 5(11) of Article III of the Constitution for reconsideration of the bill, unless the Governor prior to reconvening the session receives written requests dated no earlier than 30 days after such adjournment, signed by a majority of the members of each house that a reconvened session to reconsider vetoed legislation is unnecessary.

§ 120-6.1 has a contingent effective date.

(b) The form for the requests shall be:
"To the Governor:
A reconvened session to reconsider vetoed legislation is unnecessary.
This ________ day of ________, ________,
________, Member of the [Senate] [House of Representatives]"

Petitions as they are received are public records and shall be maintained by the Office of the Governor. (1995, c. 20, s. 15.1.)

Editor's Note. — Session Laws 1995, c. 20, s. 17 provides that sections 1 through 16 of that act shall become effective only if the constitutional amendments proposed by Session Laws 1995, c. 5, ss. 1-2 are approved as provided by Session Laws 1995, c. 5, ss. 3-4, and if so approved, sections 1 through 16 shall become effective with respect to bills and joint resolutions passed in either house of the General Assembly on or after January 1, 1997.

ARTICLE 6.

Acts and Journals.

§ 120-20. (Effective January 1, 1997, contingent on approval of proposed constitutional amendment) When acts take effect.

Acts of the General Assembly shall be in force only from and after 60 days after the adjournment of the session in which they shall have passed, unless the commencement of the operation thereof be expressly otherwise directed. (1799, c. 527, P.R.; R.C., c. 52, s. 35; 1868-9, c. 270, s. 1; Code, s. 2862; Rev., s. 4417; C.S., s. 6105; 1995, c. 20, s. 3.)

For this section as in effect until January 1, 1997, contingent on approval of the constitutional amendments proposed by Session Laws 1995, c. 5, ss. 1 and 2, see the main pamphlet.

Editor's Note. — Session Laws 1995, c. 20, s. 17 provides that sections 1 through 16 of that act shall become effective only if the constitutional amendments proposed by Session Laws 1995, c. 5, ss. 1-2 are approved as provided by Session Laws 1995, c. 5, ss. 3-4, and if so approved, sections 1 through 16 shall become effective with respect to bills and joint resolutions passed in either house of the General Assembly on or after January 1, 1997.

Effect of Amendments. — The 1995 amendment, effective on or after January 1, 1997, if constitutional amendments proposed by 1995, c. 5. ss. 1-2 are approved, substituted "60 days" for "30 days".

§ 120-29.1. (Effective January 1, 1997, contingent on approval of proposed constitutional amendment) Approval of bills.

(a) If the Governor approves a bill, the Governor shall write upon the same, to the left of and below the signatures of the presiding officers of the two houses, the fact, date, and time of approval, as follows: "Approved ______ .m. this ______ day of ______, __" and shall sign the same as follows: "________ Governor". The Governor shall then return the approved bill to the enrolling clerk.

§ 120-29.1 has a contingent effective date.

(b) If any bill becomes law because of the failure of the Governor to take any action, it shall be the duty of the Governor to return the measure to the enrolling clerk, who shall sign the following certificate on the measure and deposit it with the Secretary of State: "This bill having been presented to the Governor for his signature on the ______ day of ______, ______ and the Governor having failed to approve it within the time prescribed by law, the same is hereby declared to have become a law.

This ______ day of ______, ______, __________ Enrolling Clerk".

(c) If the Governor returns any bill to the house of origin with his objections, the Governor shall write such objections on the measure or cause the objections to be attached to the measure. When any such bill becomes law after reconsideration of the two houses, the presiding officers shall, below the objections of the Governor, sign the following certificate: "Became law notwithstanding the objections of the Governor, ____.m. this ______ day of ____, ____". The second of them to sign shall fill in the time. The enrolling clerk shall deposit the measure with the Secretary of State. (1995, c. 20, s. 2.)

Editor's Note. — Session Laws 1995, c. 20, s. 17 provides that sections 1 through 16 of that act shall become effective only if the constitutional amendments proposed by Session Laws 1995, c. 5, ss. 1-2 are approved as provided by Session Laws 1995, c. 5, ss. 3-4, and if so approved, sections 1 through 16 shall become effective with respect to bills and joint resolutions passed in either house of the General Assembly on or after January 1, 1997.

The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1995, c. 20, s. 2 having been 120-29.2.

ARTICLE 6A.1.

Submission of Acts.

§ 120-30.9B. Statewide statutes; State Board of Elections.

The Executive Secretary-Director of the State Board of Elections shall submit to the Attorney General of the United States:

(1) **(Effective until January 1, 1997, contingent on approval of proposed constitutional amendment)** Within 30 days of ratification all acts of the General Assembly that amend, delete, add to, modify or repeal any provision of Chapter 163 of the General Statutes or any other statewide legislation, except relating to Chapter 7A of the General Statutes, which constitutes a "change affecting voting" under Section 5 of the Voting Rights Act of 1965; and

(1) **(Effective January 1, 1997, contingent on approval of proposed constitutional amendment)** Within 30 days of the time they become laws all acts of the General Assembly that amend, delete, add to, modify or repeal any provision of Chapter 163 of the General Statutes or any other statewide legislation, except relating to Chapter 7A of the General Statutes, which constitutes a "change affecting voting" under Section 5 of the Voting Rights Act of 1965; and

(2) Within 30 days all alterations of precinct boundaries under G.S. 163-132.2(c) in counties covered by Section 5 of the Voting Rights Act of 1965. (1985, c. 579, s. 1; 1989, c. 440, s. 4; 1995, c. 20, s. 4.)

Subdivision (1) Set Out Twice. — The first version of subdivision (1) set out above is effective until January 1, 1997, contingent on approval of proposed constitutional amendment. The second version of subdivision (1) set out above is effective January 1, 1997, contingent on approval of proposed constitutional amendment.

Editor's Note. — Session Laws 1995, c. 20, s. 17 provides that sections 1 through 16 of that act shall become effective only if the constitutional amendments proposed by Session Laws 1995, c. 5, ss. 1-2 are approved as provided by Session Laws 1995, c. 5, ss. 3-4, and if so approved, sections 1 through 16 shall become effective with respect to bills and joint resolutions passed in either house of the General Assembly on or after January 1, 1997.

Effect of Amendments. — The 1995 amendment, effective on or after January 1, 1997, if constitutional amendments proposed by 1995, c. 5. ss. 1-2 are approved, substituted "the time they become laws" for "ratification" in subdivision (1).

§ 120-30.9C. (Effective January 1, 1997, contingent on approval of constitutional amendment) The judicial system; Administrative Office of the Courts.

The Administrative Officer of the Courts shall submit to the Attorney General of the United States within 30 days of the time they become laws all acts of the General Assembly that amend, delete, add to, modify or repeal any provision of Chapter 7A of the General Statutes of North Carolina which constitutes a "change affecting voting" under Section 5 of the Voting Rights Act of 1965. (1985, c. 579, s. 1; 1995, c. 20, s. 5.)

For this section as in effect until January 1, 1997, contingent on approval of the constitutional amendments proposed by Session Laws 1995, c. 5, ss. 1 and 2, see the main pamphlet.

Editor's Note. — Session Laws 1995, c. 20, s. 17 provides that sections 1 through 16 of that act shall become effective only if the constitutional amendments proposed by Session Laws 1995, c. 5, ss. 1-2 are approved as provided by Session Laws 1995, c. 5, ss. 3-4, and if so approved, sections 1 through 16 shall become effective with respect to bills and joint resolutions passed in either house of the General Assembly on or after January 1, 1997.

Effect of Amendments. — The 1995 amendment, effective on or after January 1, 1997, if constitutional amendments proposed by 1995, c. 5. ss. 1-2 are approved, substituted "the time they become laws" for "ratification".

§ 120-30.9E. (Effective January 1, 1997, contingent on approval of constitutional amendment) Counties; County Attorney.

The County Attorney of any county covered by the Voting Rights Act of 1965 shall submit to the Attorney General of the United States within 30 days:

(1) Of the time they become laws, any local acts of the General Assembly; and

§ 120-30.9E has a contingent effective date.

(2) Of adoption actions of the county board of commissioners, or the county board of elections or any other county agency which constitutes a "change affecting voting" under Section 5 of the Voting Rights Act of 1965 in that county. (1985, c. 579, s. 1; 1995, c. 20, s. 6.)

For this section as in effect until January 1, 1997, contingent on approval of the constitutional amendments proposed by Session Laws 1995, c. 5, ss. 1 and 2, see the main pamphlet.

Editor's Note. — Session Laws 1995, c. 20, s. 17 provides that sections 1 through 16 of that act shall become effective only if the constitutional amendments proposed by Session Laws 1995, c. 5, ss. 1-2 are approved as provided by Session Laws 1995, c. 5, ss. 3-4, and if so approved, sections 1 through 16 shall become effective with respect to bills and joint resolutions passed in either house of the General Assembly on or after January 1, 1997.

Effect of Amendments. — The 1995 amendment, effective on or after January 1, 1997, if constitutional amendments proposed by 1995, c. 5. ss. 1-2 are approved, from the end of the introductory language deleted "of ratification or adoption any local acts of the General Assembly,"; added the subdivision (1) and (2) designations; added subdivision (1); and added "Of adoption" at the beginning of subdivision (2).

§ 120-30.9F. (Effective January 1, 1997, contingent on approval of constitutional amendment) Municipalities; municipal attorney.

The municipal attorney of any municipality covered by the Voting Rights Act of 1965 shall submit to the Attorney General of the United States within 30 days:

(1) Of the time they become laws, any local acts of the General Assembly; and

(2) Of adoption actions of the municipal governing body or municipal board of elections or any other municipal agency which constitutes a "change affecting voting" under Section 5 of the Voting Rights Act of 1965 in that municipality; provided that, if required or allowed by regulations or practices of the United States Department of Justice, a municipal attorney may delay submission of any annexation ordinance or group of ordinances until all previously submitted annexation ordinances have been precleared or otherwise received final disposition. (1985, c. 579, s. 1; 1989, c. 598, s. 4; 1995, c. 20, s. 7.)

For this section as in effect until January 1, 1997, contingent on approval of the constitutional amendments proposed by Session Laws 1995, c. 5, ss. 1 and 2, see the main pamphlet.

Editor's Note. — Session Laws 1995, c. 20, s. 17 provides that sections 1 through 16 of that act shall become effective only if the constitutional amendments proposed by Session Laws 1995, c. 5, ss. 1-2 are approved as provided by Session Laws 1995, c. 5, ss. 3-4, and if so approved, sections 1 through 16 shall become effective with respect to bills and joint resolutions passed in either house of the General Assembly on or after January 1, 1997.

Effect of Amendments. — The 1995 amendment, effective on or after January 1, 1997, if constitutional amendments proposed by 1995, c. 5. ss. 1-2 are approved, from the end of the introductory language deleted "of ratification or adoption any local acts of the General Assembly,"; added the subdivision (1) and (2) designations; added subdivision

(1); and added "Of adoption" at the beginning of subdivision (2).

§ 120-30.9G. School Administrative Units; State Board of Education; Local Boards of Education Attorney.

(a) The State Board of Education shall submit to the Attorney General of the United States within 30 days any rules, policies, procedures, or actions taken pursuant to G.S. 115C-64.4 which could result in the appointment of a caretaker administrator or board to perform any of the powers and duties of a local board of education where that school administrative unit is covered by the Voting Rights Act of 1965.

(b) **(Effective until January 1, 1997, contingent on approval of constitutional amendment)** The attorney for any local board of education where that school administrative unit is covered by the Voting Rights Act of 1965 shall submit to the Attorney General of the United States within 30 days of ratification any local acts of the General Assembly, or actions of the local boards of education which constitutes a "change affecting voting" under Section 5 of the Voting Rights Act of 1965 in that school administrative unit. If the change affecting voting is a merger of two or more school administrative units, the change shall be submitted jointly by the attorneys of the school administrative units involved, or by one of them by agreement of the attorneys involved.

(b) **(Effective January 1, 1997, contingent on approval of constitutional amendment)** The attorney for any local board of education where that school administrative unit is covered by the Voting Rights Act of 1965 shall submit to the Attorney General of the United States within 30 days:

(1) Of the time they become laws, any local acts of the General Assembly; and

(2) Of adoption actions of the local boards of education which constitutes a "change affecting voting" under Section 5 of the Voting Rights Act of 1965 in that school administrative unit. If the change affecting voting is a merger of two or more school administrative units, the change shall be submitted jointly by the attorneys of the school administrative units involved, or by one of them by agreement of the attorneys involved. (1985, c. 579, s. 1; 1991, c. 529, s. 2; 1995, c. 20, s. 8.)

Subsection (b) Set Out Twice. — The first version of subsection (b) set out above is effective until January 1, 1997, contingent on approval of proposed constitutional amendment. The second version of subsection (b) set out above is effective January 1, 1997, contingent on approval of proposed constitutional amendment.

Editor's Note. —

Session Laws 1995, c. 20, s. 17 provides that sections 1 through 16 of that act shall become effective only if the constitutional amendments proposed by Session Laws 1995, c. 5, ss. 1-2 are approved as provided by Session Laws 1995, c. 5, ss. 3-4, and if so approved, sections 1 through 16 shall become effective with respect to bills and joint resolutions passed in either house of the General Assembly on or after January 1, 1997.

Effect of Amendments. — The 1995 amendment, effective on or after January 1, 1997, if constitutional amendments proposed by 1995, c. 5. ss. 1-2 are approved, from the end of the introductory language in subsection (b) deleted "of ratification or adoption any local acts of the General Assembly,"; added the subdivision (1) and (2) designations; added subdivision (1); and added "Of adoption" at the beginning of subdivision (2).

ARTICLE 6D.

Local Government Fiscal Information Act.

§ 120-30.45. Fiscal note on legislation.

(a) Every bill and resolution introduced in the General Assembly proposing any change in the law that could increase or decrease expenditures or revenues of a unit of local government shall have attached to it at the time of its consideration by the General Assembly a fiscal note prepared by the Fiscal Research Division. The fiscal note shall identify and estimate, for the first five fiscal years the proposed change would be in effect, all costs of the proposed legislation. If, after careful investigation, the Fiscal Research Division determines that no dollar estimate is possible, the note shall contain a statement to that effect, setting forth the reasons why no dollar amount can be given. No comment or opinion shall be included in the fiscal note with regard to the merits of the measure for which the note is prepared. However, technical and mechanical defects may be noted.

(b) The sponsor of each bill or resolution to which this section applies shall present a copy of the bill or resolution with the request for a fiscal note to the Fiscal Research Division. Upon receipt of the request and the copy of the bill or resolution, the Fiscal Research Division shall prepare the fiscal note as promptly as possible. The Fiscal Research Division shall prepare the fiscal note and transmit it to the sponsor within two weeks after the request is made, unless the sponsor agrees to an extension of time.

(c) This fiscal note shall be attached to the original of each proposed bill or resolution that is reported favorably by any committee of the General Assembly, but shall be separate from the bill or resolution and shall be clearly designated as a fiscal note. A fiscal note attached to a bill or resolution pursuant to this subsection is not a part of the bill or resolution and is not an expression of legislative intent proposed by the bill or resolution.

(d) If a committee of the General Assembly reports favorably a proposed bill or resolution with an amendment that proposes a change in the law that could increase or decrease expenditures or revenues of a unit of local government, the chair of the committee shall obtain from the Fiscal Research Division and attach to the amended bill or resolution a fiscal note as provided in this section.

(e) The Office of State Budget and Management, the Department of Revenue, the Department of the State Treasurer, the Department of the State Auditor, the State department most directly concerned, and, where appropriate, officials of units of local government, upon the request of Fiscal Research Division, shall assist the Fiscal Research Division in the preparation of the fiscal note.

(f) Copies of fiscal notes prepared by the Fiscal Research Division shall be furnished to the sponsor of the bill or resolution, the chairmen of the Local Government Committees, and the chairmen of the Appropriations, Finance, Rules, or the Senate Ways and Means Committees as appropriate. (1979, 2nd Sess., c. 1262, s. 5; 1995, c. 415, s. 6.)

Effect of Amendments. — The 1995 amendment, effective October 1, 1995, deleted the former first paragraph regarding preparation of a fiscal note by the Fiscal Research Division estimating the impact of any bill or resolution affecting the expenditures or revenues of units of local government; added subsections (a) through (d); and redesignated the former second and third paragraphs as subsections (e) and (f), respectively.

§ 120-30.49. Compiling federal mandates; annual report.

(a) The Fiscal Research Division shall, in consultation with the appropriate staff of the Research and Bill Drafting Divisions, make an annual report to the General Assembly pertaining to the fiscal effect of federal mandates on, or federal law on which is conditioned the receipt of federal funds by the State and units of local government. The annual report on federal mandates shall include the following:

(1) A listing of federal laws that require the State and any unit of local government, including a county, city, school administrative unit, or other local entity funded by or through a unit of local government to carry out additional or modified responsibilities;

(2) An estimate of the amount of any increase or decrease in the costs to the State and units of local government in providing or delivering public services required by federal law that are funded in whole or in part by the State or units of local government; and

(3) A listing of any other federal actions directly affecting the expenditures or revenues of the State and units of local government.

(b) The Office of State Budget and Management shall assist the Fiscal Research Division in the preparation of the annual report on federal mandates upon the request of the Division. Each State department, agency, or institution shall cooperate fully with the Fiscal Research Division in compiling the annual report on federal mandates and shall supply information to the Division in accordance with G.S. 120-32.01. The North Carolina Association of County Commissioners, the North Carolina League of Municipalities, and units of local government shall cooperate with the Fiscal Research Division in compiling the annual report on federal mandates, as requested, by supplying information relevant to the expenditures or revenues of units of local government.

(c) Copies of the annual report on federal mandates to the State and units of local government shall be provided to members of the General Assembly and to the Governor, the Office of State Budget and Management, the North Carolina Association of County Commissioners, and the North Carolina League of Municipalities. (1995, c. 415, s. 7.)

Editor's Note. — Session Laws 1995, c. 415, s. 9, made this section effective October 1, 1995.

ARTICLE 7.

Legislative Services Commission.

§ 120-32. Commission duties.

Editor's Note. —

Session Laws 1995, c. 507, s. 1.1, provides that that act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 7.12, provides: "The Legislative Administrative Officer shall increase the salaries of nonelected employees of the General Assembly in effect for fiscal year 1994-95 by two percent (2%). Nothing in this act limits any of the provisions of G.S. 120-32."

Session Laws 1995, c. 507, s. 28.9, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1995-97 biennium."

§ 120-33. (Effective January 1, 1997, contingent on approval of constitutional amendment) Duties of enrolling clerk.

(a) All bills passed by the General Assembly shall be enrolled for ratification under the supervision of the enrolling clerk.

(b) Prior to enrolling any bill, the enrolling clerk shall substitute the corresponding Arabic numeral(s) for any date or section number of the General Statutes or of any act of the General Assembly which is written in words. The enrolled bill shall have the word "RATIFIED" following the bill number.

(c) All bills shall be typewritten and carefully proofread before enrollment.

(d) Upon ratification of an act or joint resolution, the enrolling clerk shall present one true ratified copy:

(1) To the Governor of any act except acts not required to be presented to the Governor under Article II, Section 22 of the Constitution of North Carolina; and

(2) To the Secretary of State of:

a. Acts not required to be presented to the Governor under Article II, Section 22 of the Constitution of North Carolina; and

b. Joint resolutions.

In the case of any bill presented to the Governor, the enrolling clerk shall write upon the bill the time and date presented to the Governor.

(d1) The enrolling clerk shall present to the Secretary of State one true ratified copy of:

(1) Any bill which has become law with the approval of the Governor as provided by G.S. 120-29.2(a);

(2) Any bill which has become law without the approval of the Governor as provided by G.S. 120-29.2(b); and

(3) Any bill which has become law notwithstanding the objections of the Governor, as provided by G.S. 120-29.2(c).

(d2) No bill required to be presented to the Governor under Article II, Section 22 of the Constitution of North Carolina shall be so presented until the time for moving a reconsideration shall have expired, unless expressly ordered by that house where such bill was ordered enrolled.

§ 120-33 has a contingent effective date.

(e) Repealed by Session Laws 1995, c. 20, s. 1, effective January 1, 1997, contingent on approval of constitutional amendments.

(f) The enrolling clerk upon completion of duties after each session shall deposit the original bills and resolutions enrolled for ratification with the Secretary of State. (1969, c. 1184, s. 3; 1995, c. 20, s. 1.)

For this section as in effect until January 1, 1997, contingent on approval of the constitutional amendments proposed by Session Laws 1995, c. 5, ss. 1 and 2, see the main pamphlet.

Editor's Note. — Session Laws 1995, c. 20, s. 17 provides that sections 1 through 16 of that act shall become effective only if the constitutional amendments proposed by Session Laws 1995, c. 5, ss. 1-2 are approved as provided by Session Laws 1995, c. 5, ss. 3-4, and if so approved, sections 1 through 16 shall become effective with respect to bills and joint resolutions passed in either house of the General Assembly on or after January 1, 1997.

Effect of Amendments. — The 1995 amendment, effective on or after January 1, 1997, if constitutional amendments proposed by 1995, c. 5, ss. 1-2 are approved, added the last sentence in subsection (b); rewrote subsection (d); added subsections (d1) and (d2); deleted subsection (e) regarding the duty of the enrolling clerk to furnish each member of the General Assembly a conformed copy of all laws and joint resolutions showing the chapter number or joint resolution number; and in subsection (f) deleted "his" following "completion of" and deleted "by him" following "for ratification".

§ 120-34. Printing of session laws.

(a) **(Effective until January 1, 1997, contingent on approval of constitutional amendment)** The Legislative Services Commission shall publish all laws and joint resolutions passed at each session of the General Assembly. The laws and joint resolutions shall be kept separate and indexed separately. Each volume shall contain a certificate from the Secretary of State stating that the volume was printed under the direction of the Legislative Services Commission from ratified acts and resolutions on file in the Office of the Secretary of State. The Commission may publish the Session Laws and House and Senate Journals of extra and special sessions of the General Assembly in the same volume or volumes as those of regular sessions of the General Assembly. In printing, the signatures of the presiding officers shall be omitted.

(a) **(Effective January 1, 1997, contingent on approval of constitutional amendment)** The Legislative Services Commission shall publish all laws and joint resolutions passed at each session of the General Assembly. The laws and joint resolutions shall be kept separate and indexed separately. Each volume shall contain a certificate from the Secretary of State stating that the volume was printed under the direction of the Legislative Services Commission from ratified acts and resolutions on file in the Office of the Secretary of State. The Commission may publish the Session Laws and House and Senate Journals of extra and special sessions of the General Assembly in the same volume or volumes as those of regular sessions of the General Assembly. In printing, the signatures of the presiding officers and the Governor shall be omitted.

The enrolling clerk or the Legislative Services Office shall assign to each bill that becomes law a number in the order the bill became law, and the laws shall be printed in the Session Laws in that order.

§ 120-34(a) has a contingent effective date.

The number shall be preceded by the letters "S.L." followed by the calendar year it was ordered enrolled, followed by a hyphen and the sequential law number. Laws of Extra Sessions shall so indicate. In the case of any bill required to be presented to the Governor, and which became law, the Session Laws shall carry, below the date of ratification, editorial notes as to what time and what date the bill became law. In any case where the Governor has returned a bill to the General Assembly with objections, those objections shall be printed verbatim in the Session Laws, regardless of whether or not the bill became law notwithstanding the objections.

(b) All index references with respect to the session laws shall refer to the Chapter numbers of such laws in lieu of page numbers, and all index references to resolutions shall refer to the resolution numbers of the resolutions in lieu of page numbers, to the end that the indexes shall thereby be made consistent with the index to the General Statutes which refers to the section numbers and not to page numbers.

(c) There shall be printed not more than 2,500 volumes of the session laws and 600 volumes of the journals of each house of each session of the General Assembly, all of which shall be bound, and delivered to the Secretary of State for distribution by him under the provisions of G.S. 147-45, G.S. 147-46.1, G.S. 147-48 and other applicable statutes. (1969, c. 1184, s. 4; 1971, c. 685, s. 1; 1983 (Reg. Sess., 1984), c. 1034, s. 179; 1995, c. 20, s. 12.)

Subsection (a) Set Out Twice. — The first version of subsection (a) set out above is effective until January 1, 1997, contingent on approval of proposed constitutional amendment. The second version of subsection (a) set out above is effective January 1, 1997, contingent on approval of proposed constitutional amendment.

Editor's Note. — Session Laws 1995, c. 20, s. 17 provides that sections 1 through 16 of that act shall become effective only if the constitutional amendments proposed by Session Laws 1995, c. 5, ss. 1-2 are approved as provided by Session Laws 1995, c. 5, ss. 3-4, and if so approved, sections 1 through 16 shall become effective with respect to bills and joint resolutions passed in either house of the General Assembly on or after January 1, 1997.

Effect of Amendments. — The 1995 amendment, effective on or after January 1, 1997, if constitutional amendments proposed by 1995, c. 5, ss. 1-2 are approved, in subsection (a), in the last sentence of the first paragraph inserted "and the Governor" and added the second paragraph.

ARTICLE 7A.

Fiscal Research Division.

§ 120-36.8. Certification of legislation required by federal law.

(a) Every bill and resolution introduced in the General Assembly proposing any change in the law which purports to implement federal law or to be required or necessary for compliance with federal law, or on which is conditioned the receipt of federal funds shall have attached to it at the time of its consideration by the General Assembly a certification prepared by the Fiscal Research Division, in consultation with the Bill Drafting and Research

Divisions, identifying the federal law requiring passage of the bill or resolution. The certification shall contain a statement setting forth the reasons why the bill or resolution is required by federal law. If the bill or resolution is not required by federal law or exceeds the requirements of federal law, then the certification shall state the reasons for that opinion. No comment or opinion shall be included in the certification with regard to the merits of the measure for which the certification is prepared. However, technical and mechanical defects may be noted.

(b) The sponsor of each bill or resolution to which this section applies shall present a copy of the bill or resolution with the request for certification to the Fiscal Research Division. Upon receipt of the request and the copy of the bill or resolution, the Fiscal Research Division shall consult with the Bill Drafting and Research Divisions, and may consult with the Office of State Budget and Management or any State agency on preparation of the certification as promptly as possible. The Fiscal Research Division shall prepare the certification and transmit it to the sponsor within two weeks after the request is made, unless the sponsor agrees to an extension of time.

(c) This certification shall be attached to the original of each proposed bill or resolution that is reported favorably by any committee of the General Assembly, but shall be separate from the bill or resolution and shall be clearly designated as a certification. A certification attached to a bill or resolution pursuant to this section is not a part of the bill or resolution and is not an expression of legislative intent proposed by the bill or resolution.

(d) If a committee of the General Assembly reports favorably a proposed bill or resolution with an amendment proposing any change in the law which purports to implement federal law or to be required or necessary for compliance with federal law, the chair of the committee shall obtain from the Fiscal Research Division and attach to the amended bill or resolution a certification as provided in this section. (1995, c. 415, s. 8.)

Editor's Note. — Session Laws 1995, c. 415, s. 9, made this section effective October 1, 1995.

ARTICLE 8.

Elected Officers.

§ 120-37. Elected officers; salaries; staff.

(a) At the convening of the first session of the General Assembly following each biennial election of members of the General Assembly, each house shall elect a principal clerk for a term of two years, subject to the condition that each officer shall serve at the pleasure of the house that elected him or her and until his or her successor is elected. The reading clerk and sergeant-at-arms of the Senate shall serve for terms of two years, subject to the condition that each serves at the pleasure of the Senate and until the officer's successor is elected. The reading clerk and sergeant-at-arms of the House of Representatives shall serve as provided in the rules of the House.

(b) The sergeant-at-arms and the reading clerk in each house shall be paid a salary of two hundred thirty-seven dollars ($237.00) per week, plus subsistence at the same daily rate provided for members of the General Assembly, plus mileage at the rate provided for members of the General Assembly for one round trip only from their homes to Raleigh and return. The sergeants-at-arms shall serve during sessions of the General Assembly and at such time prior to the convening of, and subsequent to adjournment or recess of, sessions as may be authorized by the Legislative Services Commission. The reading clerks shall serve during sessions only.

(c) The principal clerks shall be full-time officers. Each principal clerk shall be entitled to other benefits available to permanent legislative employees and shall be paid an annual salary of fifty-five thousand eighty dollars ($55,080) payable monthly. The Legislative Services Commission shall review the salary of the principal clerks prior to submission of the proposed operating budget of the General Assembly to the Governor and Advisory Budget Commission and shall make appropriate recommendations for changes in those salaries. Any changes enacted by the General Assembly shall be by amendment to this paragraph.

(d) The Legislative Services Commission may authorize additional full-time staff employees of the office of each principal clerk. The Speaker may assign to the Principal Clerk of the House additional duties for the periods between sessions and during recesses of the General Assembly. The President pro tempore of the Senate may assign to the Principal Clerk of the Senate additional duties for the periods between sessions and during recesses of the General Assembly.

(e) The principal clerks and the sergeants-at-arms may, upon authorization of the Legislative Services Commission, employ temporary assistants to prepare for each legislative session, serve during the session, and perform necessary duties following adjournment.

(f) Following adjournment sine die of each session of the General Assembly, each principal clerk shall retain in his office for a period of two years every bill and resolution considered by but not enacted or adopted by his house, together with the calendar books and other records deemed worthy of retention. At the end of two years, these materials shall be turned over to the Division of Archives and History of the Department of Cultural Resources for ultimate retention or disposition. (1969, c. 1184, s. 7; 1977, 2nd Sess., c. 1278; 1979, c. 838, s. 82; 1979, 2nd Sess., c. 1137, s. 8; 1981, c. 1127, s. 9; 1983, c. 761, s. 197; 1983 (Reg. Sess., 1984), c. 1034, s. 208; c. 1116, s. 110; 1985, c. 479, ss. 205, 207; c. 757, s. 189; 1985 (Reg. Sess., 1986), c. 1014, ss. 30, 31; 1987, c. 738, ss. 16, 17; 1987 (Reg. Sess., 1988), c. 1086, ss. 10, 11; c. 1100, s. 16(c); 1989, c. 752, ss. 27, 28; 1991, c. 756, s. 34; 1991 (Reg. Sess., 1992), c. 900, ss. 36, 37; 1993, c. 321, ss. 53, 54; 1993 (Reg. Sess., 1994), c. 769, ss. 7.6, 7.7; 1995, c. 507, ss. 7.9, 7.10.)

Editor's Note. —

Session Laws 1995, c. 358, s. 2(a), as amended by Session Laws 1995, c. 437, s. 1, and by Session Laws 1995, c. 467, s. 1, provides that the salaries established by Session Laws 1993, c. 769, ss. 7.6 and 7.7, shall remain until July 28, 1995, at the level set by or under that section as of June 30, 1995; and that no State employee or officer may prior to July 28, 1995, receive a merit increase or annual increment.

Session Laws 1995, c. 507, s. 1.1, provides that that act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

Effect of Amendments. — Session Laws 1995, c. 507, ss. 7.9 and 7.10, effective July 1, 1995, substituted "two hundred thirty-seven dollars ($237.00)" for "two hundred thirty-two dollars ($232.00)" in the first sentence of subsection (b); and substituted "fifty-five thousand eighty dollars ($55,080)" for "fifty-four thousand dollars ($54,000)" in the second sentence of subsection (c).

Article 11.

Legislative Intern Program.

§ 120-56. (Applicable January 1, 1997) Legislative Intern Program Council created.

There is hereby created the Legislative Intern Program Council which shall consist of the President Pro Tempore of the Senate or the designee of that person, the Speaker of the House of Representatives or the designee of that person, and the chairman of the department of politics at North Carolina State University. Such Council shall establish a program for legislative interns for both houses of the General Assembly. (1969, c. 32; 1995, c. 490, s. 29.)

For this section as applicable until January 1, 1997, see the main volume.

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment in the first sentence added "Pro Tempore", and twice added "or the designee of that person". For the applicability of this amendment, see editor's note.

Article 12A.

Joint Legislative Utility Review Committee.

§ 120-70.2. (For applicability, see note) Appointment of members and organization.

The Joint Committee shall consist of ten sitting members of the General Assembly. Five shall be appointed by the President Pro Tempore of the Senate from the membership of the Senate and five shall be appointed by the Speaker of the House of Representatives from the membership of the House. Members will serve at the pleasure of their appointing officer and any vacancies occurring on the Joint Committee shall be filled by the appointing officer of the appropriate house. The President Pro Tempore of the Senate shall designate one Senator to serve as cochairman and the Speaker of the House of Representatives shall designate one Representative to serve as cochairman. A quorum shall consist of six members. (1985, c. 499, s. 1; 1991, c. 739, s. 1; 1995, c. 440, s. 1; c. 542, s. 20.5.)

Editor's Note. — Session Laws 1995, c. 542, s. 1, provides that that act shall be known as "The Studies Act of 1995".

For applicability of this section as enacted, see the main pamphlet.

Effect of Amendments. — Session Laws 1995 c. 440, s. 1, effective July 17, 1995, substituted "appointing" for "presiding" following "filled by the" in the third sentence.

Session Laws 1995 c. 542, s. 20.5,

effective July 29, 1995, in the first sentence substituted "ten" for "six", in the second sentence twice substituted "five" for "three", and in the last sentence substituted "six" for "four".

ARTICLE 12D.

Environmental Review Commission.

§ 120-70.41. Commission established.

Editor's Note. — Session Laws 1995, c. 542, s. 1, provides that that act shall be known as "The Studies Act of 1995".

Session Laws 1995, c. 542, s. 7.1, provides that the Environmental Review Commission shall study the organization, powers, duties, and functions of the boards, commissions, and councils within State government that currently exercise environmental rule making to determine if those functions should be consolidated into a full-time Environmental Commission.

ARTICLE 12K.

Joint Legislative Administrative Procedure Oversight Committee.

§ 120-70.100. Creation and membership of Joint Legislative Administrative Procedure Oversight Committee.

(a) The Joint Legislative Administrative Procedure Oversight Committee is established. The Committee consists of 16 members as follows:

(1) Eight members of the Senate appointed by the President Pro Tempore of the Senate, at least three of whom are members of the minority party.

(2) Eight members of the House of Representatives appointed by the Speaker of the House of Representatives, at least three of whom are members of the minority party.

(b) Members of the Committee shall serve a term of two years beginning on January 15 of each odd-numbered year. Members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee. A member continues to serve until the member's successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment. (1995, c. 507, s. 27.8(a).)

Editor's Note. — Session Laws 1995, c. 507, which enacted this article, in s. 27.8(z) provides that this article is effective December 1, 1995, and is applicable to all rules for which a notice of rule making is published in the North Carolina Register on or after that date and to rule and Building Code changes that are initiated on or after that date and that are not subject to the rule-making procedures set out in Article 2A of Chapter 150B of the General Statutes.

Session Laws 1995, c. 507, s. 1.1, provides that that act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.9, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the

1995-97 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1995-97 biennium."

Session Laws 1995, c. 507, s. 27.8(t), provides: "Notwithstanding G.S. 120-70.100(b), as enacted by subsection (a) of this section, the terms of initial members of the Joint Legislative Administrative Procedure Oversight Committee shall begin upon appointment and shall end on January 15, 1997."

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

§ 120-70.101. Purpose and powers of Committee.

The Joint Legislative Administrative Procedure Oversight Committee has the following powers and duties:

(1) To review rules to which the Rules Review Commission has objected to determine if statutory changes are needed to enable the agency to fulfill the intent of the General Assembly.

(2) To receive reports prepared by the Rules Review Commission containing the text and a summary of each rule approved by the Commission.

(3) To prepare a notebook that contains the administrative rules that have been approved by the Rules Review Commission and reported to the Committee and to notify each member of the General Assembly of the availability of the notebook.

(4) To review State regulatory programs to determine if the programs overlap, have conflicting goals, or could be simplified and still achieve the purpose of the regulation.

(5) To review existing rules to determine if the rules are necessary or if the rules can be streamlined.

(6) To review the rule-making process to determine if the procedures for adopting rules give the public adequate notice of and information about proposed rules.

(7) To review any other concerns about administrative law to determine if statutory changes are needed.

(8) To report to the General Assembly at the beginning of each regular session concerning the Committee's activities and any recommendations for statutory changes. (1995, c. 507, s. 27.8(a).)

Editor's Note. — Session Laws 1995, c. 507, s. 1.1, provides that that act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

§ 120-70.102. Organization of Committee.

(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Joint Legislative Administrative Procedure Oversight Committee. The Committee shall meet at least once a quarter and may meet at other times upon the joint call of the cochairs.

(b) A quorum of the Committee is nine members. No action may be taken except by a majority vote at a meeting at which a quorum is present. While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.

(c) Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. The Committee may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission. The Legislative Services Commission, through the Legislative Administrative Officer, shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be paid by the Committee. (1995, c. 507, s. 27.8(a).)

Editor's Note. — Session Laws 1995, c. 507, s. 1.1, provides that that act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

§ 120-70.103. Exercise of duty to maintain a notebook of approved rules.

With the approval of the Legislative Services Commission, the Joint Legislative Administrative Procedure Oversight Committee may delegate to the Legislative Library the duty to maintain a notebook containing rules approved by the Rules Review Commission. Whether the notebook is maintained by the Committee or by the Legislative Library, rules shall be filed in the notebook in accordance with the numbering system used in the North Carolina Administrative Code. (1995, c. 507, s. 27.8(a).)

Editor's Note. — Session Laws 1995, c. 507, s. 1.1, provides that that act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

ARTICLE 13.

Joint Legislative Commission on Governmental Operations.

§ 120-74. Appointment of members; terms of office.

The Commission shall consist of 26 members. The President pro tempore of the Senate, the Speaker pro tempore of the House, and the Majority Leader of the Senate and the Speaker of the House shall serve as ex officio members of the Commission. The Speaker of the House of Representatives shall appoint eleven members from the House. The President pro tempore of the Senate shall appoint eleven members from the Senate. Vacancies created by resignation or otherwise shall be filled by the original appointing authority. Members shall serve two-year terms beginning and ending on January 15 of the odd-numbered years, except that initial appointments shall begin on July 1, 1975. Members shall not be disqualified from completing a term of service on the Commission because they fail to run or are defeated for reelection. Resignation or removal from the General Assembly shall constitute resignation or removal from membership on the Commission. The terms of the initial members of the Commission shall expire January 15, 1977. (1975, c. 490; 1977, c. 988, s. 1; 1979, c. 932, s. 9; 1981, c. 859, s. 85; 1985, c. 757, s. 142(a)-(c); 1991, c. 72, s. 1; 1995, c. 542, s. 24.1(a).)

Editor's Note. — Session Laws 1995, c. 542, s. 1, provides that that act shall be known as "The Studies Act of 1995".

Session Laws 1995, c. 542, s. 24.1(b), provides: "Appointees to the new positions created under this section shall serve initial terms beginning on the date of their appointment and ending January 15, 1997."

Effect of Amendments. — The 1995 amendment, effective July 29, 1995, substituted "26 members" for "22 members" in the first sentence, and in the third and fourth sentences substituted "eleven members" for "nine members".

ARTICLE 14.

Legislative Ethics Act.

Part 3. Legislative Ethics Committee.

§ 120-99. (For applicability, see note) Creation; composition.

The Legislative Ethics Committee is created to consist of ten members, five Senators appointed by the President Pro Tempore of the Senate, among them — two from a list of four submitted by the Majority Leader and two from a list of four submitted by the Minority Leader, and five members of the House of Representatives appointed by the Speaker of the House, among them — two from a list of four submitted by the Majority Leader and two from a list of four submitted by the Minority Leader.

The President Pro Tempore of the Senate and the Speaker of the House shall each designate a cochair of the Legislative Ethics Committee from the respective officer's appointees. The cochair appointed by the President Pro Tempore of the Senate shall preside over the Legislative Ethics Committee during the odd-numbered year, and the cochair appointed by the Speaker of the House shall preside in the even-numbered year.

The provisions of G.S. 120-19.1 through G.S. 120-19.8 shall apply to the proceedings of the Legislative Ethics Committee as if it were a joint committee of the General Assembly, except that both cochairs shall sign all subpoenas on behalf of the Committee. (1975, c. 564, s. 1; 1985, c. 790, s. 6; 1991, c. 739, s. 15; 1995, c. 180, s. 1.)

Editor's Note. —

Session Laws 1995, c. 180, s. 4 provides that the terms of office of the current members of the Legislative Ethics Committee shall not be affected by that act, except that the Senator previously appointed as chairman is designated the cochair from the Senate and shall serve until the expiration of the Senator's current term of office as a member of the General Assembly and the Speaker of the House shall make the additional appointment as soon as practicable after ratification (June 6, 1995).

Effect of Amendments. — The 1995 amendment, effective June 6, 1995, in the first paragraph substituted "ten members, five Senators" for "a chairman and eight members, four Senators" following "created to consist of", inserted "among them —" twice preceding "two from a list of four", and substituted "five" for "four" preceding "members of the House"; rewrote the second paragraph; and substituted "both cochairs" for "the chairman" preceding "shall sign all subpoenas" in the last paragraph.

§ 120-100. Term of office; vacancies.

Appointments to the Legislative Ethics Committee shall be made immediately after the convening of the regular session of the General Assembly in odd-numbered years, and appointees shall serve until the expiration of their then-current terms as members of the General Assembly. A vacancy occurring for any reason during a term shall be filled for the unexpired term by the authority making the appointment which caused the vacancy, and the person appointed to fill the vacancy shall, if possible, be a member of the same political party as the member who caused the vacancy. (1975, c. 564, s. 1; 1995, c. 180, s. 2.)

Editor's Note. — Session Laws 1995, c. 180, s. 4 provides that the terms of office of the current members of the Legislative Ethics Committee shall not be affected by that act, except that the Senator previously appointed as chairman is designated the cochair from the Senate and shall serve until the expiration of the Senator's current term of office as a member of the General Assembly and the Speaker of the House shall make the additional appointment as soon as practicable after ratification (June 6, 1995).

Effect of Amendments. — The 1995 amendment, effective June 6, 1995, deleted the first sentence regarding initial members of the Legislative Ethics Committee and expiration of their terms; substituted "Appointments to the Legislative Ethics Committee" for "Thereafter, appointments" at the beginning of the present first sentence; and deleted the former third sentence which read "The chairman shall serve for one year and shall be appointed each year."

§ 120-101. Quorum; expenses of members.

Six members constitute a quorum of the Committee. A vacancy on the Committee does not impair the right of the remaining members to exercise all the powers of the Committee.

The members of the Committee, while serving on the business of the Committee, are performing legislative duties and are entitled to the subsistence and travel allowances to which members of the General Assembly are entitled when performing legislative duties. (1975, c. 564, s. 1; 1995, c. 180, s. 3.)

Effect of Amendments. — The 1995 amendment, effective June 6, 1995, substituted "Six members" for "Five members" at the beginning of the first paragraph and deleted "chairman and" preceding "members of the Committee" near the beginning of the second paragraph.

ARTICLE 16.

Legislative Appointments to Boards and Commissions.

§ 120-123. Service by members of the General Assembly on certain boards and commissions.

No member of the General Assembly may serve on any of the following boards or commissions:

(1) The Board of Agriculture, as established by G.S. 106-2.
(1a) Not effectuated.
(1b) The Rules Review Commission as established by G.S. 143B-30.1.

(2) The Art Museum Building Commission, as established by G.S. 143B-59.

(3) The Governor's Advocacy Council for Persons with Disabilities, as established by G.S. 143B-403.2.

(3a) The State Banking Commission, as established by G.S. 53-92.

(4) The Board of Public Telecommunications Commissioners, as established by G.S. 143B-426.9.

(5) The Board of Transportation, as established by G.S. 143B-350.

(6) The Board of Trustees Teachers' and State Employees' Retirement System, as established by G.S. 135-6.

(6a) Repealed by Session Laws 1991 (Regular Session, 1992), c. 1030, s. 33, effective July 24, 1992.

(7) The Coastal Resources Commission, as established by G.S. 113A-104.

(8) The Environmental Management Commission, as established by G.S. 143B-283.

(8a) The Genetic Engineering Review Board, as created by G.S. 106-769.

(9) The State Fire and Rescue Commission, as established by G.S. 58-78-1.

(10) The Public Officers and Employees Liability Insurance Commission, as established by G.S. 58-32-1.

(11) Repealed by Session Laws 1983 (Regular Session, 1984), c. 995, s. 4.

(12) Repealed by Session Laws 1987, c. 71, s. 4.

(13) The North Carolina Criminal Justice Education and Training Standards Commission, as established by G.S. 17C-3.

(14) The North Carolina Housing Finance Agency Board of Directors, as established by G.S. 122A-4.

(15) The North Carolina Seafood Industrial Park Authority, as established by G.S. 113-315.25.

(16) Repealed by Session Laws 1985, c. 479, s. 153(b).

(17) The Board of Trustees of the North Carolina School of Science and Mathematics, as established by G.S. 116-233.

(18) The North Carolina Board of Science and Technology, as established by G.S. 143B-426.30.

(19) Repealed by Session Laws 1989, c. 500, s. 107(b).

(20) Repealed by Session Laws 1989 (Regular Session, 1990), c. 1024, s. 23(a).

(21) The Board of Trustees of the University of North Carolina Center for Public Television, as established by G.S. 116-37.1.

(22) The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services, as established by G.S. 143B-147.

(23) Repealed by Session Laws 1993, c. 501, s. 12, effective July 23, 1993.

(24) The North Carolina Alcoholism Research Authority, as established by G.S. 122C-431.

(25) The North Carolina Ports Railway Commission, as established by G.S. 143B-469.

(25a) The North Carolina Global TransPark Authority as established under G.S. 63A-3.

(26) The North Carolina State Ports Authority, as established by G.S. 143B-452.

(27) The Property Tax Commission, as established by G.S. 105-288.
(28) The Social Services Commission, as established by G.S. 143B-154.
(29) The North Carolina State Commission of Indian Affairs, as established by G.S. 143B-407.
(30) The Wildlife Resources Commission, as established by G.S. 143-240.
(31) The North Carolina Council for Women, as established by G.S. 143B-393.
(32) The Board of Trustees of North Carolina Museum of Art, established by G.S. 140-5.13.
(33) The North Carolina Sheriffs' Education and Training Standards Commission, established by G.S. 17E.
(33a) Repealed by Session Laws 1987, c. 738, s. 41(d).
(34) The Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan, as established by G.S. 143B-426.24.
(34a) Repealed by Session Laws 1989 (Regular Session, 1990), c. 1024, s. 23(b).
(34b) The North Carolina Housing Partnership, as established by G.S. 122E-4.
(35) The Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan, as established by G.S. 135-39.
(36) The Milk Commission as established by G.S. 106-266.7.
(37) The State Board of Chiropractic Examiners as established by G.S. 90-139.
(38) The North Carolina Manufactured Housing Board, as established by G.S. 143-143.10.
(39) Repealed by Session Laws 1987, c. 71, s. 4.
(40) The Alarm System Licensing Board, as established by G.S. 74D-4.
(41) Repealed by Session Laws 1985 (Regular Session, 1986), c. 1011, s. 2.1(c).
(42) The Crime Victims Compensation Commission, as established by G.S. 15B-3.
(43) The North Carolina Council on Ocean Affairs, as established by G.S. 143B-390.10.
(44) The Child Day-Care Commission, as established by G.S. 143B-168.3.
(45) Repealed by Session Laws 1995, c. 517, s. 39, effective October 1, 1995.
(45a) The North Carolina Teaching Fellows Commission, as established by G.S. 115C-363.22.
(46) The Board of Directors of the North Carolina Arboretum, as established in G.S. 116-240.
(47) The North Carolina Agricultural Finance Authority, as established by G.S. 122D-4.
(48) Reserved for future codification purposes.
(49) The Northeastern North Carolina Farmers Market Commission as established by G.S. 106-720.
(50) The Southeastern North Carolina Farmers Market Commission as established by G.S. 106-727.
(50a) The North Carolina Board of Dietetics/Nutrition as created by Article 25 of Chapter 90 of the General Statutes.

(51) The State Building Commission, as established by G.S. 143-135.25.
(52) The Commission on School Facility Needs, established by G.S. 115C-489.4.
(53) The North Carolina Marine Fisheries Commission as established by G.S. 143B-289.5.
(54) The North Carolina Low-Level Radioactive Waste Management Authority, as established by G.S. 104G-5.
(55) The North Carolina Health Insurance Trust Commission, as established by G.S. 58-68-10.
(56) The North Carolina Hazardous Waste Management Commission, as established by G.S. 130B-6.
(57) The Information Resource Management Commission, as established by G.S. 143B-426.21.
(58) The Appraisal Board created in G.S. 93E-1-5.
(59) The North Carolina Aquariums Commission, as established by G.S. 143B-390.15.
(59a) The North Carolina Principal Fellows Commission established by G.S. 116-74.41.
(60) The Commission on School Technology, as established by G.S. 115C-102.5, except as provided in G.S. 115C-102.5(c).
(61) The State Health Plan Purchasing Alliance Board, as established by G.S. 143-625.
(62) The Northeastern North Carolina Regional Economic Development Commission, as established by G.S. 158-8.2.
(63) The Teacher Academy Board of Trustees, as established by Section 17.9 of House Bill 229 of the 1995 General Assembly [G.S. 116-30.01].
(63a) **(Applicable January 1, 1997)** The North Carolina Code Officials Qualification Board, as established by G.S. 143-151.9.
(64) A facility authority established under Part 4 of Article 20 of Chapter 160A of the General Statutes.
(64a) **(Applicable January 1, 1997)** The North Carolina Educational Facilities Finance Agency, as established by G.S. 115E-4.
(65) **(Applicable January 1, 1997)** The Board of Governors of the North Carolina Health Care Excess Liability Fund, as established by G.S. 58-47-20.
(66) **(Applicable January 1, 1997)** The Local Government Commission, as established by G.S. 159-3.
(67) **(Applicable January 1, 1997)** The Board of Trustees of the Natural Heritage Trust Fund, as established by G.S. 113-77.8. (1981 (Reg. Sess., 1982), c. 1191, s. 2; 1983, c. 328, s. 1.1; c. 558, s. 5; c. 559, s. 4; c. 717, ss. 2, 3, 43.2, 99, 105, 110; c. 761, s. 179; c. 778, s. 2; c. 786, s. 9; c. 789, s. 2; c. 832, ss. 2, 6; c. 871, s. 3; c. 899, s. 3; 1983 (Reg. Sess., 1984), c. 995, ss. 4, 19; 1985, c. 202, s. 5; c. 479, s. 153(b); c. 589, s. 37; c. 666, s. 80; c. 746, s. 6; c. 757, ss. 155(b), 167(h), 179(e), 206(f), 208(c); 1985 (Reg. Sess., 1986), c. 1011, ss. 2, 2.1(c); c. 1014, ss. 63(h), 99; c. 1028, s. 33; c. 1029, s. 14.3; 1987, c. 71, ss. 4, 5; c. 622, s. 15; c. 641, s. 21; c. 738, s. 41(d); c. 765, s. 2; c. 841, s. 4; c. 850, s. 18; 1987 (Reg. Sess., 1988), c. 993, s. 27; 1989, c. 139, s. 2; c. 168, s. 8; c. 239, s. 7; c. 500, ss. 107(b), 109(g); c. 625, s. 24; c. 727, s. 140; c. 750, s. 4; c. 752, s. 148(c); 1989 (Reg. Sess., 1990), c. 827, s. 14; c. 1024, s.

§ 120-123(67) has a delayed applicability date.

23(a)-(d); c. 1074, s. 32(a)-(c); 1991, c. 134, s. 1; c. 301, s. 1; c. 668, s. 2; c. 749, s. 6; 1991 (Reg. Sess., 1992), c. 900, s. 14(f); c. 1007, s. 37; c. 1030, ss. 33, 51.14; c. 1044, s. 10(b); 1993, c. 321, ss. 85(d), 135(b), 309.1(b); c. 405, s. 18.1; c. 419, s. 13.1; c. 501, s. 12; c. 529, s. 3.9; 1993 (Reg. Sess., 1994), c. 777, s. 4(f); 1995, c. 324, s. 17.9(i); c. 458, s. 2; c. 490, ss. 12(b), 17(b), 21(b), 30(b), 37(b); c. 517, s. 39(d).)

Editor's Note. —

The majority of section 17.9 of House Bill 229 of the 1995 of the General Assembly, which is referred to above in subdivision (63), has been codified as 116-30.01 at the direction of the Revisor of Statutes.

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Session Laws 1995, c. 324, s. 28.4, c. 458, s. 6 and c. 517, ss. 39(i) and 41, contain severability clauses.

Effect of Amendments. —

Session Laws 1995, c. 324, s. 17, effective July 1, 1995, added subdivision (63).

Session Laws 1995, c. 458, s. 2, effective July 19, 1995, added subdivision (64).

Session Laws 1995, c. 490, ss. 12(b), 17(b), 21(b), 30(b) and 37(b), added subdivisions (63a), (64a), (65), (66) and (67). For the applicability of this amendment, see editor's note.

Session Laws 1995, c. 517, s. 39(d), effective October 1, 1995, repealed subdivision (45).

ARTICLE 17.

Confidentiality of Legislative Communications.

§ 120-131.1. Requests from legislative employees for assistance in the preparation of fiscal notes.

(a) A request made to an employee of a State agency other than the General Assembly by an employee of the Fiscal Research Division for assistance in the preparation of a fiscal note is confidential. An employee of a State agency other than the General Assembly who receives such a request or who learns of such a request made to another employee of his or her agency shall reveal the existence of the request only to other employees of the agency to the extent that it is necessary to respond to the request, and to the employee's supervisor and to the Office of State Budget and Management. All documents prepared by the employee in response to the request of the Fiscal Research Division are also confidential and shall be kept confidential in the same manner as the original request, except that documents submitted to the Fiscal Research Division in response to the request cease to be confidential under this section when the Fiscal Research Division releases a fiscal note based on the documents.

(b) As used in this section, "employee" means an employee or officer of a State agency.

(c) Violation of this section may be grounds for disciplinary action. (1995, c. 324, s. 8.1(a); c. 507, s. 8.2.)

Editor's Note. — Session Laws 1995, c. 324, s. 8.1(b) made this section effective 30 days after ratification. The Act was ratified June 26, 1995.

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

Session Laws 1995, c. 507, s. 1.1, provides that that act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability cause.

Effect of Amendments. — Session Laws 1995, c. 507, s. 8.2, effective July 1, 1995, added "except that documents submitted to the Fiscal Research Division in response to the request cease to be confidential under this section when the Fiscal Research Division releases a fiscal note based on the documents" at the end of the last sentence in subsection (a).

§ 120-133. (Effective January 1, 1997, contingent on approval of constitutional amendment) Redistricting communications.

Notwithstanding any other provision of law, all drafting and information requests to legislative employees and documents prepared by legislative employees for legislators concerning redistricting the North Carolina General Assembly or the Congressional Districts are no longer confidential and become public records upon the act establishing the relevant district plan becoming law. Present and former legislative employees may be required to disclose information otherwise protected by G.S. 120-132 concerning redistricting the North Carolina General Assembly or the Congressional Districts upon the act establishing the relevant district plan becoming law. (1983, c. 900, s. 1; 1995, c. 20, s. 13.)

For this section as in effect until January 1, 1997, contingent on approval of the constitutional amendments proposed by Session Laws 1995, c. 5, ss. 1 and 2, see the main pamphlet.

Editor's Note. — Session Laws 1995, c. 20, s. 17 provides that sections 1 through 16 of that act shall become effective only if the constitutional amendments proposed by Session Laws 1995, c. 5, ss. 1-2 are approved as provided by Session Laws 1995, c. 5, ss. 3-4, and if so approved, sections 1 through 16 shall become effective with respect to bills and joint resolutions passed in either house of the General Assembly on or after January 1, 1997.

Effect of Amendments. — The 1995 amendment, effective on or after January 1, 1997, if constitutional amendments proposed by 1995, c. 5. ss. 1-2 are approved, in the first and second sentences deleted "ratification of the" preceding "act establishing" and added "becoming law" at the end.

Article 18A.

Review of Proposals to License New Occupations and Professions.

§ 120-149.3. Assessment of new licensing boards.

(a) Any legislative proposal introduced in the General Assembly after the effective date of this act proposing (1) the establishment of a new licensing board, or (2) a study of the need to establish a new licensing board, shall not be eligible for consideration on the floor of either house (other than first reading) or before any committee of either house of the General Assembly until a final assessment report has been issued pursuant to G.S. 120-149.4(e), with a copy of the report accompanying the proposal in accordance with the rules of the appropriate house.

(b) If the proposal to establish a new licensing board is first contained in a legislative proposal, the sponsor shall present a copy of the legislative proposal to the Legislative Committee on New Licensing Boards which shall prepare an assessment report. If the proposal is not in the form of a legislative proposal, the person or organization seeking to establish a new licensing board may obtain an assessment report from the Committee only if a legislator requests such a report.

(c) **(Effective until January 1, 1997, contingent on approval of constitutional amendment)** If a legislative proposal receives a favorable report but is not ratified during the biennial session in which it is introduced, a new assessment report shall be required before the same or a substantially similar legislative proposal may be considered after first reading or by any committee during a subsequent biennial session of the General Assembly. If a proposal receives a favorable report but is not introduced as a legislative proposal, the favorable report shall expire at the adjournment of the biennial session coinciding with or following issuance of the final report.

(c) **(Effective January 1, 1997, contingent on approval of constitutional amendment)** If a legislative proposal receives a favorable report but does not become law during the biennial session in which it is introduced, a new assessment report shall be required before the same or a substantially similar legislative proposal may be considered after first reading or by any committee during a subsequent biennial session of the General Assembly. If a proposal receives a favorable report but is not introduced as a legislative proposal, the favorable report shall expire at the adjournment of the biennial session coinciding with or following issuance of the final report.

(d) A preliminary assessment report shall be prepared and returned to the sponsor or requesting legislator as soon as possible and not later than 60 days after the Committee receives the request, provided that if the volume of requests makes preparation of all such reports impossible within that time, the Committee may extend the time for preparation of any report to a maximum of 90 days from the time the request is received. The Committee shall not consider any request until it has received the information required by G.S. 120-149.4(a).

(e) If an amendment or committee substitute to a legislative proposal is introduced, the appropriate committee chairman, the presiding officer of the appropriate house, or the sponsor of the proposal may request a supplementary report when, in the opinion of any of them, the amendment or committee substitute substantially alters the legislative proposal. The supplementary report shall be prepared and returned to the requesting individual, and to the sponsor, within 30 days after the Committee receives the request.

(f) Each assessment report shall be designated as either preliminary, final, or supplementary and shall not constitute any part of the expression of legislative intent proposed by the formation of a new licensing board. An unfavorable final report shall not bar further consideration of the proposal on the floor or by any committee of either house.

(g) The Committee shall make all reports, including supplementary reports, available to all members of the General Assembly. At least one copy of all preliminary, final, and supplementary reports shall be maintained in the Legislative Library for public inspection. (1987, c. 180, s. 1; 1995, c. 20, s. 14.)

Subsection (c) Set Out Twice. — The first version of subsection (c) set out above is effective until January 1, 1997, contingent on approval of proposed constitutional amendment. The second version of subsection (c) set out above is effective January 1, 1997, contingent on approval of proposed constitutional amendment.

Editor's Note. — Session Laws 1995, c. 20, s. 17 provides that sections 1 through 16 of that act shall become effective only if the constitutional amendments proposed by Session Laws 1995, c. 5, ss. 1-2 are approved as provided by Session Laws 1995, c. 5, ss. 3-4, and if so approved, sections 1 through 16 shall become effective with respect to bills and joint resolutions passed in either house of the General Assembly on or after January 1, 1997.

Effect of Amendments. — The 1995 amendment, effective on or after January 1, 1997, if constitutional amendments proposed by 1995, c. 5. ss. 1-2 are approved, substituted "does not become law" for "is not ratified" in the first sentence of subsection (c).

ARTICLE 19.

Commission on Agriculture, Forestry, and Seafood Awareness.

§ 120-150. (Applicable January 1, 1997) Creation; appointment of members.

There is created an Agriculture and Forestry Awareness Study Commission. Members of the Commission shall be citizens of North Carolina who are interested in the vitality of the agriculture and forestry sectors of the State's economy. Members shall be as follows:

(1) Three appointed by the Governor;
(2) Three appointed by the President Pro Tempore of the Senate;
(3) Three appointed by the Speaker of the House;
(4) The chairman of the House Agriculture Committee;
(5) The chairman of the Senate Agriculture Committee;
(6) The Commissioner of Agriculture or his designee;
(7) A member of the Board of Agriculture designated by the chairman of the Board of Agriculture;
(8) The President of the North Carolina Farm Bureau Federation, Inc., or his designee;
(9) The Master of the North Carolina State Grange or his designee;
(10) The Secretary of the Department of Environment, Health, and Natural Resources or his designee; and
(11) The President of the North Carolina Forestry Association, Inc., or his designee.

Members shall be appointed for two-year terms beginning October 1 of each odd-numbered year. The cochairmen of the Commission shall be the chairmen of the Senate and House Agriculture Committees respectively. (1985, c. 792, s. 20.1; 1989, c. 727, s. 218(81); 1989 (Reg. Sess., 1990), c. 1004, s. 19(b); 1991 (Reg. Sess., 1992), c. 785, s. 1; 1993, c. 23, s. 1; 1995, c. 490, s. 5.)

For this section as applicable until January 1, 1997, see the main volume.

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment added "Pro Tempore" in subdivision (2). For the applicability of this amendment, see editor's note.

ARTICLE 22.

The Public Health Study Commission.

§ 120-195. (See editor's note) Commission created; purpose.

Editor's Note. —

Session Laws 1993 (Reg. Sess., 1994), c. 771, s. 8.1 provided for the repeal of this Article, and was amended by Session Laws 1995, c. 358, s. 6, by Session Laws 1995, c. 437, s. 4, and by Session Laws 1995, c. 467, s. 3, to make the repeal effective July 28, 1995. Session Laws 1995, c. 507, s. 23A.6(b), effective July 1, 1995, amended Session Laws 1993 (Reg. Sess., 1994), c. 771, s. 8.1, by deleting the language repealing this Article; therefore, the repeal has not been given effect.

Session Laws 1995, c. 507, s. 1.1, provides that the act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

§ 120-196. (See editor's note) Commission duties.

The Commission shall study the availability and accessibility of public health services to all citizens throughout the State. In conducting the study the Commission shall:

(1) Determine whether the public health services currently available in each county or district health department conform to the mission and essential services established under G.S. 130A-1.1;

(2) Study the workforce needs of each county or district health department, including salary levels, professional credentials, and continuing education requirements, and determine the impact that shortages of public health professional personnel have on the delivery of public health services in county and district health departments;

(3) Review the status and needs of local health departments relative to facilities, and the need for the development of minimum standards governing the provision and maintenance of these facilities;

(4) Propose a long-range plan for funding the public health system, which plan shall include a review and evaluation of the current structure and financing of public health in North Carolina and any other recommendations the Commission deems appropriate based on its study activities;

(5) Conduct any other studies or evaluations the Commission considers necessary to effectuate its purpose; and

(6) Study the capacity of small counties to meet the core public health functions mandated by current State and federal law. The Commission shall consider whether the current county and district health departments should be organized into a network of larger multidistrict community

administrative units. In making its recommendations on this study, the Commission shall consider whether the State should establish minimum populations for local health departments, and if so, shall recommend the number of and configuration for these multicounty administrative units and shall recommend a series of incentives to ease county transition into these new arrangements. (1993 (Reg. Sess., 1994), c. 771, s. 2.1; 1995, c. 507, s. 23A.6(a), (b).)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 771, s. 8.1 provided for the repeal of this Article, and was amended by Session Laws 1995, c. 358, s. 6, by Session Laws 1995, c. 437, s. 4, and by Session Laws 1995, c. 467, s. 3, to make the repeal effective July 28, 1995. Session Laws 1995, c. 507, s. 23A.6(b), effective July 1, 1995, amended Session Laws 1993 (Reg. Sess., 1994), c. 771, s. 8.1, by deleting the language repealing this Article; therefore, the repeal has not been given effect.

Session Laws 1995, c. 507, s. 1.1, provides that the act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, deleted "and" at the end of subdivision (4); added "and" at the end of subdivision (5); and added subdivision (6).

§ 120-197. (See editor's note) Commission membership; vacancies; terms.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 771, s. 8.1 provided for the repeal of this Article, and was amended by Session Laws 1995, c. 358, s. 6, by Session Laws 1995, c. 437, s. 4, and by Session Laws 1995, c. 467, s. 3, to make the repeal effective July 28, 1995. Session Laws 1995, c. 507, s. 23A.6(b), effective July 1, 1995, amended Session Laws 1993 (Reg. Sess., 1994), c. 771, s. 8.1, by deleting the language repealing this Article; therefore, the repeal has not been given effect.

Session Laws 1995, c. 507, s. 1.1, provides that the act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

§ 120-198. (See editor's note) Commission meetings.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 771, s. 8.1 provided for the repeal of this Article, and was amended by Session Laws 1995, c. 358, s. 6, by Session Laws 1995, c. 437, s. 4, and by Session Laws 1995, c. 467, s. 3, to make the repeal effective July 28, 1995. Session Laws 1995, c. 507, s. 23A.6(b), effective July 1, 1995, amended Session Laws 1993 (Reg. Sess., 1994), c. 771, s. 8.1, by deleting the language repealing this Article; therefore, the repeal has not been given effect.

Session Laws 1995, c. 507, s. 1.1, provides that the act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

§ 120-199. (See editor's note) Commission reimbursement.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 771, s. 8.1 provided for the repeal of this Article, and was amended by Session Laws 1995, c. 358, s.

6, by Session Laws 1995, c. 437, s. 4, and by Session Laws 1995, c. 467, s. 3, to make the repeal effective July 28, 1995. Session Laws 1995, c. 507, s. 23A.6(b), effective July 1, 1995, amended Session Laws 1993 (Reg. Sess., 1994), c. 771, s. 8.1, by deleting the language repealing this Article; therefore, the repeal has not been given effect.

Session Laws 1995, c. 507, s. 1.1, provides that the act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

§ 120-200. (See editor's note) Commission subcommittees; non-Commission membership.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 771, s. 8.1 provided for the repeal of this Article, and was amended by Session Laws 1995, c. 358, s. 6, by Session Laws 1995, c. 437, s. 4, and by Session Laws 1995, c. 467, s. 3, to make the repeal effective July 28, 1995. Session Laws 1995, c. 507, s. 23A.6(b), effective July 1, 1995, amended Session Laws 1993 (Reg. Sess., 1994), c. 771, s. 8.1, by deleting the language repealing this Article; therefore, the repeal has not been given effect.

Session Laws 1995, c. 507, s. 1.1, provides that the act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

§ 120-201. (See editor's note) Commission authority.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 771, s. 8.1 provided for the repeal of this Article, and was amended by Session Laws 1995, c. 358, s. 6, by Session Laws 1995, c. 437, s. 4, and by Session Laws 1995, c. 467, s. 3, to make the repeal effective July 28, 1995. Session Laws 1995, c. 507, s. 23A.6(b), effective July 1, 1995, amended Session Laws 1993 (Reg. Sess., 1994), c. 771, s. 8.1, by deleting the language repealing this Article; therefore, the repeal has not been given effect.

Session Laws 1995, c. 507, s. 1.1, provides that the act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

§ 120-202. (See editor's note) Commission reports.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 771, s. 8.1 provided for the repeal of this Article, and was amended by Session Laws 1995, c. 358, s. 6, by Session Laws 1995, c. 437, s. 4, and by Session Laws 1995, c. 467, s. 3, to make the repeal effective July 28, 1995. Session Laws 1995, c. 507, s. 23A.6(b), effective July 1, 1995, amended Session Laws 1993 (Reg. Sess., 1994), c. 771, s. 8.1, by deleting the language repealing this Article; therefore, the repeal has not been given effect.

Session Laws 1995, c. 507, s. 1.1, provides that the act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

§ 120-203. (See editor's note) Commission staff; meeting place.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 771, s. 8.1 provided for the repeal of this Article, and was amended by Session Laws 1995, c. 358, s. 6, by Session Laws 1995, c. 437, s. 4, and by Session Laws 1995, c. 467, s. 3, to make the repeal effective July 28, 1995. Session Laws 1995, c. 507, s. 23A.6(b), effective July 1, 1995, amended Session Laws 1993 (Reg. Sess., 1994), c. 771, s. 8.1, by deleting the language repealing this Article; therefore, the repeal has not been given effect.

Session Laws 1995, c. 507, s. 1.1, provides that the act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

Chapter 121.

Archives and History.

Article 1.

General Provisions.

Sec.
121-9. Historic properties.
121-12. North Carolina Historical Commission.

Article 4.

Conservation and Historic Preservation Agreements Act.

Sec.
121-35. Definitions.

ARTICLE 1.

General Provisions.

§ 121-9. Historic properties.

(a) Administration of Properties Acquired by State. — Historic or archaeological properties acquired by the State for administration by the State of North Carolina shall be under the control and administration of the Department of Cultural Resources. Upon approval of the North Carolina Historical Commission and the Secretary of Cultural Resources, the Department of Cultural Resources may, in its discretion, make a contract with any county or municipality within the State or with any nonprofit corporation or organization for the administration of any portion of such property.

(b) Acquisition of Historic Properties. — For the purpose of protecting or preserving any property of historical, architectural, archaeological, or other cultural importance to the people of North Carolina, and subject to the provisions of Subchapter II of Chapter 146 of the General Statutes, the Department may, with the approval of the North Carolina Historical Commission, acquire, preserve, restore, hold, maintain, operate, and dispose of such properties, together with such adjacent lands as may be necessary for their protection, preservation, maintenance, and operation. Such property may be real or personal in nature, and in the case of real property, the acquisition may include the fee or any lesser interest therein. Property may be acquired by gift, grant, bequest, devise, lease, purchase, or condemnation pursuant to the provisions of Chapter 40A of the General Statutes, or otherwise. Property may be acquired by the Department, using such funds as may be appropriated for the purpose or moneys available to it from any other source.

(c) Interests Which May Be Acquired. — In the case of real property, the interest acquired shall be limited to that estate, interest, or term deemed by the Department to be reasonably necessary for the continued protection or preservation of the property. The Department may acquire the fee simple title, but where it finds that a lesser interest, including any development right, negative or affirmative easement in gross or appurtenant, covenant, lease, or other contractual right of or to any real property to be the most practical and economical method of protecting and preserving historic property, the lesser interest may be acquired.

(d) Conveyance of Property for Preservation Purposes. — In appropriate cases, the Department may acquire or dispose of the fee or lesser interest to any such property for the specific purpose of conveying or leasing the property back to its original owner or of conveying or leasing it to such other person, firm, association, corporation, or other organization under such covenants, deed restrictions, lease, or other contractual arrangements as will limit the future use of the property in such a way as to insure its preservation. Where such action is taken, the property may be conveyed or leased by private sale. In all cases where property is conveyed, it shall be subjected by covenant or otherwise to such rights of access, public visitation, and other conditions or restrictions of operation, maintenance, restoration, and repair as the Department may prescribe, or to such conditions as may be agreed upon between the Department and the grantee or lessee to accomplish the purposes of this section.

(e) Use of Property so Acquired. — Any historic property acquired, whether in fee or otherwise, may be used, maintained, improved, restored, or operated by the Department for any public purpose within its powers and not inconsistent with the purpose of the continued preservation of the property. The property shall not be subject to condemnation by the State of North Carolina or any of its agencies or political subdivisions at any time, unless such method of acquisition is first approved by the Governor and Council of State.

(f) Emergency Acquisition Where Funds Not Immediately Available. — If funds or contributions for the acquisition of needed historic property are not available, the Governor and Council of State may, upon the recommendation of the Secretary of Cultural Resources and approval of the North Carolina Historical Commission, allocate from the Contingency and Emergency Fund an amount sufficient to acquire an option on the property or properties, which option shall continue until 90 days after the adjournment sine die of the next General Assembly. Upon recommendation of the Secretary and approval of the Historical Commission, the Governor and Council of State may allocate funds from the Contingency and Emergency Fund for the immediate acquisition, preservation, restoration, or operation of historically, archaeologically, architecturally, or culturally important properties. All funds hereinafter appropriated to purchase, restore, maintain, develop, or operate historic or archaeological or other important property shall be administered subject to the provisions of Article 1 of Chapter 143 of the General Statutes unless the statute making the appropriation shall in specific and express terms provide otherwise.

(g) Power to Acquire Property by Condemnation. — In the event that a property which has been found by the Department of Cultural Resources to be important for public ownership or assistance is in danger of being sold, used, or neglected to such an extent that its historical or cultural importance will be destroyed or seriously impaired, or that the property is otherwise in danger of destruction or serious impairment, the Department of Cultural Resources, after receiving the approval of the North Carolina Historical Commission and of the Governor and Council of State, may acquire the historic property or any interest therein by condemnation under the provisions of Chapter 40A of the General Statutes. The Department of Cultural Resources, upon finding that destruction or serious impairment of the value of the property is imminent, shall file with the Governor and Council of State a report on the importance of the property and the desirability of ownership of the property, or the ownership of an interest therein, by the State of North Carolina.

Upon giving their approval, the Governor and Council of State shall cause to have filed such approval with the clerk of the superior court in the county or counties where the property is situated. Until the approval is filed, the power of condemnation may not be exercised. All condemnation proceedings shall be instituted and prosecuted in the name of the State of North Carolina.

(h) Preservation and Custodial Care of State Capitol. — The rotunda, corridors, and stairways of the first floor of the State Capitol and all portions of the second, third, and loft floors of the said building shall be placed in the custody of the Department of Cultural Resources; and the Department shall, subject to the availability of funds for the purpose, care for and administer these areas for the edification of present and future generations. The aforesaid areas shall be preserved as historic shrines and shall be maintained insofar as practicable as they shall appear following the restoration of the Capitol. The Department of Cultural Resources is authorized to deny the use of the legislative chambers for meetings in order that they, with their historic furnishings, may be better preserved for posterity; provided, however, that the General Assembly may hold therein such sessions as it may by resolution deem proper.

The Department of Cultural Resources is hereby entrusted with the responsibilities herein specified as being the agency with the experience best qualified to preserve and administer historic properties in a suitable manner. However, for the purposes of carrying out the provisions of this section, it is hereby directed that such cooperation and assistance shall be made available to the said Department of Cultural Resources and such labor supplied, as may be feasible, by the Department of Administration.

The offices and working areas of the first floor as well as all washrooms and the exterior of the Capitol shall remain under the jurisdiction of the Department of Administration: Provided, however, that the Department of Administration shall seek the advice of the Department of Cultural Resources in matters relating to any alteration, renovation, and furnishing of said offices and areas. (1955, c. 543, s. 1; 1961, c. 724; 1963, c. 210, s. 1; 1965, c. 1129; 1971, c. 480, ss. 1-3, 5; 1973, c. 476, s. 48; 1991 (Reg. Sess., 1992), c. 1030, s. 34; 1993 (Reg. Sess., 1994), c. 682, s. 2; 1995, c. 507, s. 12(b).)

Editor's Note. — Session Laws 1995, c. 507, s. 1.1, provides that the act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

Effect of Amendments. —

The 1995 amendment, effective July 28, 1995, added subsection (h), which reenacted the law as it existed prior to July 1, 1995.

§ 121-12. North Carolina Historical Commission.

(a) Protection of Properties on National Register. — It shall be the duty of the Historical Commission, meeting at such times and according to such procedures as it shall by rule prescribe, to provide an advisory and coordinative mechanism in and by which State undertakings of every kind that are potentially harmful to the cause of historic preservation within the State may be discussed, and where possible, resolved, giving due consideration to the competing public interests that may be involved. To this end, the head of any

State agency having direct or indirect jurisdiction over a proposed State or state-assisted undertaking, or the head of any State department, board, commission, or independent agency having authority to build, construct, operate, license, authorize, assist, or approve any State or state-assisted undertaking, shall, prior to the approval of any State funds for the undertaking, or prior to any approval, license, or authorization, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is listed in the National Register of Historic Places established pursuant to Public Law 89-665, 16 U.S.C. 470.

Where, in the judgment of the Commission, an undertaking will have an effect upon any listed district, site, building, structure, area, or object, the head of the appropriate State agency shall afford the Commission a reasonable opportunity to comment with regard to such undertaking.

The Historical Commission shall act with reasonable diligence to insure that all State departments, boards, commissions, or agencies potentially affected by the provisions of this section be kept currently informed with respect to the name, location, and other significant particulars of any district, site, building, structure, or object listed or placed upon the National Register of Historic Places. Each affected State department or agency shall furnish, either upon its own initiative or at the request of the Historical Commission such information as may reasonably be required by the Commission for the proper implementation of this section.

(b) Criteria for State Historic Properties. — The Commission shall prepare and adopt criteria for the evaluation of State historic sites and all other real and personal property which it may consider to be of such historic, architectural, archaeological, or cultural importance as would justify the acquisition and ownership thereof by the State of North Carolina, or for the extension of any assistance or aid thereto by the State, acting by itself or in connection with any county, city, corporation, organization, or individual. The Commission shall cooperate to the fullest practical extent with any local historical organization and with any city or county historic district properties commission. In evaluating whether a building should be a State historic site, the Commission shall request and review plans for the use and maintenance of the building.

(c) Criteria for State Aid to Historic Properties. — The Commission shall also prepare and adopt criteria for the evaluation of all properties of historic or archaeological importance owned by, under option to, or being considered for acquisition by a county, city, historic properties commission, or other organization or individual for which State aid or assistance is requested from the Department of Cultural Resources. The Commission shall investigate, evaluate, and prepare a written report on all historic or archaeological property for which State aid or appropriations to be administered by the Department of Cultural Resources are proposed. If the property is a building, the Commission shall request and review the plans for the use, maintenance, operation, and purpose of the building and shall comment on the feasibility of the plans in the written report. This report, which shall be filed as a matter of record in the custody of the Department of Cultural Resources, shall set forth the following opinions or recommendations of the Commission:

(1) Whether the property is historically authentic;

(2) Whether it is of such educational, historical, or cultural significance as to be essential to the development of a

balanced State program of historic and archaeological sites and properties;

(3) The estimated total cost of the project under consideration and the apportionment of said cost among State and nonstate sources;

(4) Whether practical plans have been or can be developed for the funding of the nonstate portion of the costs;

(5) Whether practical plans have been developed for the continued staffing, maintenance and operation of the property without State assistance; and

(6) Such further comments and recommendations that the Commission may make.

(c1) Criteria for State Aid to Historical Museums. — The Commission shall also prepare and adopt criteria for the evaluation of all interpretive, security or climate control programs or projects to be installed in nonprofit history museums for which State aid or assistance is requested from the Department of Cultural Resources. The Commission shall investigate, evaluate, and prepare a written report on all interpretive, security, or climate control programs or projects for which State appropriations to be administered by the Department of Cultural Resources are proposed. This report, which shall be filed as a matter of record in the custody of the Department of Cultural Resources, shall set forth the following opinions or recommendations of the Commission:

(1) The statewide educational significance and the qualitative level of the program or project and whether the program or project is essential to the development of a State program of historical interpretation;

(2) The local or regional need for such a program or project;

(3) The estimated total cost of the program or project under consideration and the apportionment of said cost among State and nonstate sources;

(4) Whether practical plans have been or can be developed for the funding of the nonstate portions of the costs;

(5) Whether practical plans have been developed for the continued staffing, maintenance, and operating of the museum without State assistance; and

(6) Such further comments and recommendations that the Commission may make.

(d) Commission to Furnish Recommendations to Legislative Committees. — The Commission through the Department of Cultural Resources shall furnish as soon as practicable to the chairman of each legislative committee to which is referred any bill seeking an appropriation of State funds to the Department of Cultural Resources for the purpose of acquiring, preserving, restoring, or operating, or otherwise assisting, any property having historic, archaeological, architectural, or other cultural value or significance, and to the chairman of each legislative committee to which is referred any bill seeking an appropriation of State funds to the Department of Cultural Resources for the purpose of assisting a history museum, at least five copies of a report on the findings and recommendations of the Commission relating to such property. (1973, c. 476, s. 48; 1975, c. 19, s. 40; 1979, c. 861, ss. 3-5; 1985 (Reg. Sess., 1986), c. 1014, s. 171(b); 1995, c. 324, s. 12.)

Editor's Note. — Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, added the last sentence in subsection (b), and added the third sentence in subsection (c).

ARTICLE 4.

Conservation and Historic Preservation Agreements Act.

§ 121-35. Definitions.

Subject to any additional definitions contained in this Article, or unless the context otherwise requires:

(1) A "conservation agreement" means a right, whether or not stated in the form of a restriction, reservation, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of land or improvement thereon or in any order of taking, appropriate to retaining land or water areas predominantly in their natural, scenic or open condition or in agricultural, horticultural, farming or forest use, to forbid or limit any or all (i) construction or placing of buildings, roads, signs, billboards or other advertising, utilities or other structures on or above the ground, (ii) dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste or unsightly or offensive materials, (iii) removal or destruction of trees, shrubs or other vegetation, (iv) excavation, dredging or removal of loam, peat, gravel, soil, rock or other mineral substance in such manner as to affect the surface, (v) surface use except for agricultural, farming, forest or outdoor recreational purposes or purposes permitting the land or water area to remain predominantly in its natural condition, (vi) activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation, or (vii) other acts or uses detrimental to such retention of land or water areas.

(2) "Holder" means any public body of this State, including the State, any of its agencies, any city, county, district or other political subdivision or municipal or public corporation, or any instrumentality of any of the foregoing, any agency, department, or instrumentality of the United States, any nonprofit corporation or trust, or any private corporation or business entity whose purposes include any of those stated in (1) and (3), covering the purposes of preservation and conservation agreements.

(3) A "preservation agreement" means a right, whether or not stated in the form of a restriction, reservation, easement, covenant, condition or otherwise, in any deed, will or other instrument executed by or on behalf of the owner of the

land or any improvement thereon, or in any other [order] of taking, appropriate to preservation of a structure or site historically significant for its architecture, archaeology or historical associations, to forbid or limit any or all (i) alteration, (ii) alterations in exterior or interior features of the structure, (iii) changes in appearance or condition of the site, (iv) uses not historically appropriate, or (v) other acts or uses supportive of or detrimental to appropriate preservation of the structure or site. (1979, c. 747, s. 2; 1995, c. 443, s. 1.)

Editor's Note. — Session Laws 1995, c. 443, s. 2, effective July 18, 1995, provides for the validation and confirmation of any conservation agreement or preservation agreement entered into by an agency, department, or instrumentality of the United States on or after June 1, 1979, and prior to the effective date of that act, July 18, 1995.

Effect of Amendments. — The 1995 amendment, effective July 18, 1995, added "any agency, department, or instrumentality of the United States" in subdivision (2).

Chapter 122A.

Editor's Note. — The legislation and annotations affecting Chapter 122A have been included in a recently published replacement chapter.

Chapter 122C.

Mental Health, Developmental Disabilities, and Substance Abuse Act of 1985.

Article 1.

General Provisions.

Sec.
122C-3. Definitions.

Article 2.

Licensure of Facilities for the Mentally Ill, the Developmentally Disabled, and Substance Abusers.

122C-22. Exclusions from licensure; deemed status.

Article 3.

Clients' Rights.

122C-53. Exceptions; client.
122C-57. Right to treatment and consent to treatment.
122C-62. Additional rights in 24-hour facilities.

Article 4.

Organization and System for Delivery of Mental Health, Developmental Disabilities, and Substance Abuse Services.

Part 2. State, County and Area Authority.

122C-112. Powers and duties of the Secretary.
122C-119.1. Area Authority board members' training.
122C-124. Area Authority funding suspended.
122C-125. Area Authority financial failure; State assumption of financial control.
122C-126. Area authority caretakers appointed.

Part 4. Area Facilities.

122C-142.1. Substance abuse services for those convicted of driving while impaired or driving while less than 21 years old after consuming alcohol or drugs.
122C-147. Financing and title of area authority property.
122C-151.1. [Repealed.]

Part 7. Contested Case Hearings for Eligible Assaultive and Violent Children.

122C-194. Declaration of policy.
122C-195. Scope and effect.
122C-196. Prior notice.
122C-197. Mediation.
122C-198. Decision of the administrative law judge.
122C-199. Administrative review by Review Officer.
122C-200. Enforcing decision.

Article 5.

Procedures for Admission and Discharge of Clients.

Part 7. Involuntary Commitment of the Mentally Ill and the Mentally Retarded with Behavior Disorders; Facilities for the Mentally Ill.

122C-268.1. Inpatient commitment; hearing following automatic commitment.
122C-269. Venue of hearing when respondent held at a 24-hour facility pending hearing.

Article 6.

Special Provisions.

Part 2. Black Mountain Joint Security Force.

122C-421. Joint security force.

ARTICLE 1.

General Provisions.

§ 122C-3. Definitions.

As used in this Chapter, unless another meaning is specified or the context clearly requires otherwise, the following terms have the meanings specified:

(1) "Area authority" means the area mental health, developmental disabilities, and substance abuse authority.

(2) "Area board" means the area mental health, developmental disabilities, and substance abuse board.

(3) "Camp Butner reservation" means the original Camp Butner reservation as may be designated by the Secretary as having been acquired by the State and includes not only areas which are owned and occupied by the State but also those which may have been leased or otherwise disposed of by the State.

(4) "City" has the same meaning as in G.S. 153A-1(1).

(5) "Catchment area" means the geographic part of the State served by a specific area authority.

(6) "Client" means an individual who is admitted to and receiving service from, or who in the past had been admitted to and received services from, a facility.

(7) "Client advocate" means a person whose role is to monitor the protection of client rights or to act as an individual advocate on behalf of a particular client in a facility.

(8) "Commission" means the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services, established under Part 4 of Article 3 of Chapter 143B of the General Statutes.

(9) "Confidential information" means any information, whether recorded or not, relating to an individual served by a facility that was received in connection with the performance of any function of the facility. "Confidential information" does not include statistical information from reports and records or information regarding treatment or services which is shared for training, treatment, habilitation, or monitoring purposes that does not identify clients either directly or by reference to publicly known or available information.

(10) "County of residence" of a client means the county of his domicile at the time of his admission or commitment to a facility. A county of residence is not changed because an individual is temporarily out of his county in a facility or otherwise.

(11) "Dangerous to himself or others" means:

a. "Dangerous to himself" means that within the relevant past:

1. The individual has acted in such a way as to show:

I. That he would be unable, without care, supervision, and the continued assistance of others not otherwise available, to exercise self-control, judgment, and discretion in the conduct of his daily responsibilities and social relations, or to satisfy his need for nourishment, personal or medical care, shelter, or self-protection and safety; and

II. That there is a reasonable probability of his suffering serious physical debilitation within the near future unless adequate treatment is given pursuant to this Chapter. A showing of behavior that is grossly irrational, of actions that the individual is unable to control, of behavior that is grossly inappropriate to the situation, or of other evidence of severely impaired insight and judgment shall create a prima facie inference that the individual is unable to care for himself; or

2. The individual has attempted suicide or threatened suicide and that there is a reasonable probability of suicide unless adequate treatment is given pursuant to this Chapter; or

3. The individual has mutilated himself or attempted to mutilate himself and that there is a reasonable probability of serious self-mutilation unless adequate treatment is given pursuant to this Chapter.

Previous episodes of dangerousness to self, when applicable, may be considered when determining reasonable probability of physical debilitation, suicide, or self-mutilation.

b. "Dangerous to others" means that within the relevant past, the individual has inflicted or attempted to inflict or threatened to inflict serious bodily harm on another, or has acted in such a way as to create a substantial risk of serious bodily harm to another, or has engaged in extreme destruction of property; and that there is a reasonable probability that this conduct will be repeated. Previous episodes of dangerousness to others, when applicable, may be considered when determining reasonable probability of future dangerous conduct. Clear, cogent, and convincing evidence that an individual has committed a homicide in the relevant past is prima facie evidence of dangerousness to others.

(11a) "Day/night service" means a service provided on a regular basis, in a structured environment that is offered to the same individual for a period of three or more hours within a 24-hour period.

(12) "Department" means the North Carolina Department of Human Resources.

(12a) "Developmental disability" means a severe, chronic disability of a person which:

a. Is attributable to a mental or physical impairment or combination of mental and physical impairments;

b. Is manifested before the person attains age 22, unless the disability is caused by a traumatic head injury and is manifested after age 22;

c. Is likely to continue indefinitely;

d. Results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, capacity for independent living, learning, mobility, self-direction and economic self-sufficiency; and

e. Reflects the person's need for a combination and sequence of special interdisciplinary, or generic care, treatment, or other services which are of a lifelong or extended duration and are individually planned and coordinated; or

f. When applied to children from birth through four years of age, may be evidenced as a developmental delay.

(13) "Division" means the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department.

(13a) "Eligible assaultive and violent children" means children who are citizens of North Carolina and:

a. Who suffer from emotional, mental, or neurological handicaps that have been accompanied by behavior that is characterized as violent or assaultive; and

b. Who are involuntarily institutionalized or otherwise placed in residential programs, including:

1. Minors who are mentally ill as defined by G.S. 122C-3(21) and who are admitted for evaluation or treatment to a treatment facility under Article 5 of Chapter 122C of the General Statutes or are presented for admission and denied due to their behaviors or handicapping conditions;
2. Minors who are referred to an area mental health, developmental disabilities, and substance abuse authority pursuant to G.S. 7A-647(3) for whom residential treatment or placement is recommended;
3. Minors who are placed in residential programs as a condition of probation pursuant to G.S. 7A-649(8);
4. Minors who are ordered to a professional residential treatment program pursuant to G.S. 7A-649(6); and
5. Minors committed to the custody of the Division of Youth Services pursuant to G.S. 7A-649(10); and

c. For whom the State has not provided appropriate treatment and educational programs.

(13a1) "Eligible infants and toddlers" means children with or at risk for developmental delays or atypical development until:

a. They have reached their third birthday;

b. Their parents have requested to have them receive services in the preschool program for handicapped children established pursuant to Part 14 of Article IX of Chapter 115C of the General Statutes; and

c. They have been placed in the program by the local educational agency.

In no event shall a child be considered an eligible toddler after the beginning of the school year immediately following the child's third birthday.

The early intervention services that may be provided for these children and their families include early identification and screening, multidisciplinary evaluations, case management services, family training, counseling and home visits, psychological services, speech pathology and audiology, and occupational and physical therapy. All evaluations performed as part of early intervention services shall be appropriate to the individual child's age and development.

(13b) "Eligible psychologist" means a licensed psychologist who has at least two years' clinical experience. After January 1, 1995, "eligible psychologist" means a licensed psychologist who holds permanent licensure and certification as a health services provider psychologist issued by the North Carolina Psychology Board.

(14) "Facility" means any person at one location whose primary purpose is to provide services for the care, treatment, habilitation, or rehabilitation of the mentally ill, the developmentally disabled, or substance abusers, and includes:

a. An "area facility", which is a facility that is operated by or under contract with the area authority. A facility that is providing services under contract with the area authority is an area facility for purposes of the contracted services only. Area facilities may also be licensable facilities in accordance with Article 2 of this Chapter. A State facility is not an area facility;

b. A "licensable facility", which is a facility that provides services for one or more minors or for two or more adults. When the services offered are provided to individuals who are mentally ill or developmentally disabled, these services shall be day services offered to the same individual for a period of three hours or more during a 24-hour period, or residential services provided for 24 consecutive hours or more. When the services offered are provided to individuals who are substance abusers, these services shall include all outpatient services, day services offered to the same individual for a period of three hours or more during a 24-hour period, or residential services provided for 24 consecutive hours or more. Facilities for individuals who are substance abusers include chemical dependency facilities;

c. A "private facility", which is a facility that is either a licensable facility or a special unit of a general hospital or a part of either in which the specific service provided is not covered under the terms of a contract with an area authority;

d. The psychiatric service of the University of North Carolina Hospitals at Chapel Hill;

e. A "residential facility", which is a 24-hour facility that is not a hospital, including a group home;

f. A "State facility", which is a facility that is operated by the Secretary;

g. A "24-hour facility", which is a facility that provides a structured living environment and services for a period of 24 consecutive hours or more and includes hospitals that are facilities under this Chapter; and

h. A Veterans Administration facility or part thereof that provides services for the care, treatment, habilitation, or rehabilitation of the mentally ill, the developmentally disabled, or substance abusers.

(15) **"Guardian"** means a person appointed as a guardian of the person or general guardian by the court under Chapters 7A or 35A or former Chapters 33 or 35 of the General Statutes.

(16) **"Habilitation"** means training, care, and specialized therapies undertaken to assist a client in maintaining his current level of functioning or in achieving progress in developmental skills areas.

(17) "Incompetent adult" means an adult individual adjudicated incompetent.

(18) "Intoxicated" means the condition of an individual whose mental or physical functioning is presently substantially impaired as a result of the use of alcohol or other substance.

(19) "Law-enforcement officer" means sheriff, deputy sheriff, police officer, State highway patrolman, or an officer employed by a city or county under G.S. 122C-302.

(20) "Legally responsible person" means: (i) when applied to an adult, who has been adjudicated incompetent, a guardian; or (ii) when applied to a minor, a parent, guardian, a person standing in loco parentis, or a legal custodian other than a parent who has been granted specific authority by law or in a custody order to consent for medical care, including psychiatric treatment.

(20a) "Local funds" means fees from services, including client payments, Medicare and the local and federal share of Medicaid receipts, fees from agencies under contract, gifts and donations, and county and municipal funds, and any other funds not administered by the Division.

(21) "Mental illness" means: (i) when applied to an adult, an illness which so lessens the capacity of the individual to use self-control, judgment, and discretion in the conduct of his affairs and social relations as to make it necessary or advisable for him to be under treatment, care, supervision, guidance, or control; and (ii) when applied to a minor, a mental condition, other than mental retardation alone, that so impairs the youth's capacity to exercise age adequate self-control or judgment in the conduct of his activities and social relationships so that he is in need of treatment.

(22) "Mental retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before age 22.

(23) "Mentally retarded with accompanying behavior disorder" means an individual who is mentally retarded and who has a pattern of maladaptive behavior that is recognizable no later than adolescence and is characterized by gross outbursts of rage or physical aggression against other individuals or property.

(24) "Next of kin" means the individual designated in writing by the client or his legally responsible person upon the client's acceptance at a facility; provided that if no such designation has been made, "next of kin" means the client's spouse or nearest blood relation in accordance with G.S. 104A-1.

(25) "Operating costs" means expenditures made by an area authority in the delivery of services for mental health, developmental disabilities, and substance abuse as provided in this Chapter and includes the employment of legal

counsel on a temporary basis to represent the interests of the area authority.

(26) Repealed by Session Laws 1987, c. 345, s. 1.

(26a) "Other recipient" means an individual who is not admitted to a facility but who receives a service other than care, treatment, or rehabilitation services. The services that the "other recipient" may receive include consultative, preventative, educational, and assessment services.

(27) "Outpatient treatment" as used in Part 7 of Article 5 means treatment in an outpatient setting and may include medication, individual or group therapy, day or partial day programming activities, services and training including educational and vocational activities, supervision of living arrangements, and any other services prescribed either to alleviate the individual's illness or disability, to maintain semi-independent functioning, or to prevent further deterioration that may reasonably be predicted to result in the need for inpatient commitment to a 24-hour facility.

(28) "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, agency, or area authority.

(29) "Physician" means an individual licensed to practice medicine in North Carolina under Chapter 90 of the General Statutes or a licensed medical doctor employed by the Veterans Administration.

(30) "Provider of support services" means a person that provides to a facility support services such as data processing, dosage preparation, laboratory analyses, or legal, medical, accounting, or other professional services, including human services.

(30a) "Psychologist" means an individual licensed to practice psychology under Chapter 90. The term "eligible psychologist" is defined in subdivision (13a).

(31) **(See editor's note for expiration date)** "Qualified professional" means any individual with appropriate training or experience as specified by the General Statutes or by rule of the Commission in the fields of mental health or developmental disabilities or substance abuse treatment or habilitation, including physicians, psychologists, psychological associates, educators, social workers, registered nurses, certified fee-based practicing pastoral counselors, and certified counselors.

(32) "Responsible professional" means an individual within a facility who is designated by the facility director to be responsible for the care, treatment, habilitation, or rehabilitation of a specific client and who is eligible to provide care, treatment, habilitation, or rehabilitation relative to the client's disability.

(33) "Secretary" means the Secretary of the Department of Human Resources.

(33a) "Severe and persistent mental illness" means a mental disorder suffered by persons of 18 years of age or older that leads these persons to exhibit emotional or behavioral functioning that is so impaired as to interfere substantially with their capacity to remain in the community without supportive treatment or services of a long term or indefinite duration. This disorder is a severe and persistent mental disability, resulting in a long-term limitation of functional capacities for the primary activities of daily living, such as interpersonal relations, homemaking, self-care, employment, and recreation.

(34) "Single portal of entry and exit policy" means an admission and discharge policy for designated facilities that is adopted by an area authority and shall be approved by the Secretary before it is in force. The policy and its provisions shall be designed to promote quality client care in and among designated facilities. Furthermore, the policy shall be designed to integrate otherwise independent facilities into a unified and coordinated system, in which system the area authority shall be responsible for assuring that the individual client can receive services from the facility that is best able to meet his needs. However, the policy may not be inconsistent with any other provisions of the General Statutes or federal law, nor may the policy include the complete exclusion of clients from admission to any specific facility.

(35) "Single portal area" means the county or counties that comprise the catchment area of an area authority that has adopted a single portal of entry and exit policy.

(35a) "State resources" means State and federal funds and other receipts administered by the Division.

(36) "Substance abuse" means the pathological use or abuse of alcohol or other drugs in a way or to a degree that produces an impairment in personal, social, or occupational functioning. "Substance abuse" may include a pattern of tolerance and withdrawal.

(37) "Substance abuser" means an individual who engages in substance abuse. (1899, c. 1, s. 28; Rev., s. 4574; C.S., s. 6189; 1945, c. 952, s. 18; 1947, c. 537, s. 12; 1949, c. 71, s. 3; 1955, c. 887, s. 1; 1957, c. 1232, s. 13; 1959, c. 1028, s. 4; 1963, c. 1166, ss. 2, 10; c. 1184, s. 1; 1965, c. 933; 1973, c. 475, s. 2; c. 476, s. 133; c. 726, s. 1; c. 1408, ss. 1, 3; 1977, c. 400, ss. 2, 12; c. 568, s. 1; c. 679, s. 7; 1977, 2nd Sess., c. 1134, s. 2; 1979, c. 164, ss. 3, 4; c. 171, s. 2; c. 358, ss. 2, 26; c. 915, s. 1; c. 751, s. 28; 1981, c. 51, ss. 2-4; c. 539, s. 1; 1983, c. 280; c. 383, s. 2; c. 638, s. 2; c. 718, s. 1; c. 864, s. 4; 1983 (Reg. Sess., 1984), c. 1110, s. 4; 1985, c. 589, s. 2; c. 695, s. 1; c. 777, s. 2; 1985 (Reg. Sess., 1986), c. 863, s. 7; 1987, c. 345, s. 1; c. 830, ss. 47(a), (b); 1989, c. 141, s. 8; c. 223; c. 486, s. 2; c. 625, s. 2; 1989 (Reg. Sess., 1990), c. 823, s. 11; c. 1003, s. 2; c. 1024, s. 26(a); 1993, c. 321, s. 220(a)-(c); c. 375, s. 6; c. 396, ss. 1, 2; 1995, c. 249, s. 1; c. 406, s. 5.)

Editor's Note. —

Session Laws 1995, c. 249, s. 5, provides that rules adopted for Willie M. class members prior to July 1, 1995, shall remain in effect until amended or repealed by rules adopted for eligible assaultive and violent children.

Session Laws 1995, c. 406, s. 6, provides that the amendment to subdivision (31) of this section by Session Laws 1995, c. 406, s. 5, expires July 1, 1999.

Effect of Amendments. —

Session Laws 1995, c. 249, s. 1, effective July 1, 1995, redesignated former subdivision (13a) as (13a1) and added present subdivision (13a).

Session Laws, 1995, c. 406, s. 5, effective July 15, 1995, and applicable to treatment or services rendered on or after that date, added "certified fee-based practicing pastoral counselors" in subdivision (31).

CASE NOTES

Eating disorders are subsumed under the definition of mental illness and are not included in the terms "chemical dependency" or "substance abuse." Laurel Wood of Henderson, Inc. v. North Carolina Dep't of Human Resources, 117 N.C. App. 601, 452 S.E.2d 334 (1995).

Quoted in Scott v. Scott, 336 N.C. 284, 442 S.E.2d 493 (1994).

Cited in In re LaRue, 113 N.C. App. 807, 440 S.E.2d 301 (1994); Taylor Home of Charlotte Inc. v. City of Charlotte, 116 N.C. App. 188, 447 S.E.2d 438, cert. denied, 338 N.C. 524, 453 S.E.2d 170 (1994).

ARTICLE 2.

Licensure of Facilities for the Mentally Ill, the Developmentally Disabled, and Substance Abusers.

§ 122C-22. Exclusions from licensure; deemed status.

(a) The following are excluded from the provisions of this Article and are not required to obtain licensure under this Article:

(1) Physicians and psychologists engaged in private office practice;

(2) General hospitals licensed under Article 5 of Chapter 131E of the General Statutes, that operate special units for the mentally ill, developmentally disabled, or substance abusers;

(3) State and federally-operated facilities;

(4) Adult care homes licensed under Chapter 131D of the General Statutes;

(5) Developmental child day care centers licensed under Article 7 of Chapter 110 of the General Statutes;

(6) Persons subject to licensure under rules of the Social Services Commission;

(7) Persons subject to rules and regulations of the Division of Vocational Rehabilitation Services; and

(8) Facilities that provide occasional respite care for not more than two individuals at a time; provided that the primary purpose of the facility is other than as defined in G.S. 122C-3(14).

(b) The Commission may adopt rules establishing a procedure whereby a licensable facility certified by a nationally recognized agency, such as the Joint Commission on Accreditation of Hospitals, may be deemed licensed under this Article by the Secretary. Any facility licensed under the provisions of this subsection shall continue to be subject to inspection by the Secretary. (1983, c. 718, s. 1; 1983 (Reg. Sess., 1984), c. 1110, s. 5; 1985, c. 589, s. 2; c. 695, s. 13; 1987, c. 345, s. 2; 1989, c. 625, s. 5; 1995, c. 535, s. 7.)

Editor's Note. — Session Laws 1995, c. 535, which amended this section, in s. 37 provides: "Rules adopted by the Department of Human Resources, the Medical Care Commission, and the Social Services Commission regulating domiciliary care homes prior to the effective date of this act remain in effect for adult care homes until amended or repealed."

Session Laws 1995, c. 507, s. 19.9, provides that inpatient chemical dependency or substance abuse facilities that provide services exclusively to inmates of the Department of Correction shall be exempt from licensure by the Department of Human Resources under Chapter 122C of the General Statutes; that if a facility provides services both to inmates and to the public, the portion of the facility that serves inmates shall be exempt from licensure; any person who contracts to provide such services to inmates may construct and operate a new facility without first obtaining a certificate of need from the Department of Human Resources, and that a new facility or addition without a certificate of need shall not be licensed pursuant to Chapter 122C of the General Statutes and shall not admit anyone other than inmates without first obtaining a certificate of need; and that this section applies to existing facilities as well as future facilities contracting with the Department of Correction.

Effect of Amendments. — The 1995 amendment, effective October 1, 1995, substituted "Adult care homes" for "Domiciliary care homes" in subdivision (a)(4).

§ 122C-25. Inspections; confidentiality.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 122C-28. Penalties.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 3.

Clients' Rights.

§ 122C-52. Right to confidentiality.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

Stated in In re Hayes, 111 N.C. App. 384, 432 S.E.2d 862 (1993).

§ 122C-53. Exceptions; client.

(a) A facility may disclose confidential information if the client or his legally responsible person consents in writing to the release of the information to a specified person. This release is valid for a specified length of time and is subject to revocation by the consenting individual.

(b) A facility may disclose the fact of admission or discharge of a client to the client's next of kin whenever the responsible professional determines that the disclosure is in the best interest of the client.

(c) Upon request a client shall have access to confidential information in his client record except information that would be injurious to the client's physical or mental well-being as determined by the attending physician or, if there is none, by the facility director or his designee. If the attending physician or, if there is none, the facility director or his designee has refused to provide confidential information to a client, the client may request that the information be sent to a physician or psychologist of the client's choice, and in this event the information shall be so provided.

(d) Except as provided by G.S. 90-21.4(b), upon request the legally responsible person of a client shall have access to confidential information in the client's record; except information that would be injurious to the client's physical or mental well-being as determined by the attending physician or, if there is none, by the facility director or his designee. If the attending physician or, if there is none, the facility director or his designee has refused to provide confidential information to the legally responsible person, the legally responsible person may request that the information be sent to a physician or psychologist of the legally responsible person's choice, and in this event the information shall be so provided.

(e) A client advocate's access to confidential information and his responsibility for safeguarding this information are as provided by subsection (g) of this section.

(f) As used in subsection (g) of this section, the following terms have the meanings specified:

(1) "Internal client advocate" means a client advocate who is employed by the facility or has a written contractual agreement with the Department or with the facility to provide monitoring and advocacy services to clients in the facility in which the client is receiving services; and

(2) "External client advocate" means a client advocate acting on behalf of a particular client with the written consent and authorization;

  a. In the case of a client who is an adult and who has not been adjudicated incompetent under Chapter 35A or former Chapters 33 or 35 of the General Statutes, of the client; or

  b. In the case of any other client, of the client and his legally responsible person.

(g) An internal client advocate shall be granted, without the consent of the client or his legally responsible person, access to routine reports and other confidential information necessary to fulfill his monitoring and advocacy functions. In this role, the internal client advocate may disclose confidential information received to the client involved, to his legally responsible person, to the director of the facility or his designee, to other individuals within the facility who are involved in the treatment or habilitation of the client, or to the Secretary in accordance with the rules of the Commission. Any further disclosure shall require the written consent of the client and his legally responsible person. An external client advocate shall have access to confidential information only upon the written consent of the client and his legally responsible person. In this role, the external client advocate may use the information only as authorized by the client and his legally responsible person.

(h) In accordance with G.S. 122C-205, the facility shall notify the appropriate individuals upon the escape from and subsequent return of clients to a 24-hour facility.

(i) Upon the request of (i) a client who is an adult and who has not been adjudicated incompetent under Chapter 35A or former Chapters 33 or 35 of the General Statutes, or (ii) the legally responsible person for any other client, a facility shall disclose to an attorney confidential information relating to that client. (1973, c. 475, s. 1; c. 1436, ss. 2-5; 1985, c. 589, s. 2; 1989 (Reg. Sess., 1990), c. 1024, s. 26(d); 1995, c. 507, s. 23.4.)

Editor's Note. —

Session Laws 1995, c. 507, s. 1.1, provides that the act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, substituted "(i) a client who is an adult and who has not been adjudicated incompetent under Chapter 35A or former Chapters 33 or 35 of the General Statutes, or (ii) the legally responsible person for any other client" for "a client" in subsection (i).

CASE NOTES

Information Injurious to the Client. — This statute explicitly prohibits a client from access to information in the client's record that would be injurious to the client's physical or mental well-being as determined by the attending physician; thus it would subvert the purpose of this prohibition to allow the client's attorney to obtain the injurious information and then pass such material to the client without restriction. Lavelle v. Guilford County Area Mental Illness, Mental Retardation & Substance Abuse Auth., 115 N.C. App. 75, 443 S.E.2d 761 (1994).

§ 122C-57. Right to treatment and consent to treatment.

(a) Each client who is admitted to and is receiving services from a facility has the right to receive age-appropriate treatment for mental health, mental retardation, and substance abuse illness or disability. Each client within 30 days of admission to a facility shall have an individual written treatment or habilitation plan implemented by the facility. The client and the client's legally responsible person shall be informed in advance of the potential risks and alleged benefits of the treatment choices.

(b) Each client has the right to be free from unnecessary or excessive medication. Medication shall not be used for punishment, discipline, or staff convenience.

(c) Medication shall be administered in accordance with accepted medical standards and only upon the order of a physician as documented in the client's record.

(d) Each voluntarily admitted client or the client's legally responsible person has the right to consent to or refuse any treatment offered by the facility. Consent may be withdrawn at any time by the person who gave the consent. If treatment is refused, the qualified professional shall determine whether treatment in some other modality is possible. If all appropriate treatment modalities are refused, the voluntarily admitted client may be discharged. In an emergency, a voluntarily admitted client may be administered treatment or medication, other than those specified in subsection (f) of this section, despite the refusal of the client or the client's legally responsible person. The Commission may adopt rules to provide a procedure to be followed when a voluntarily admitted client refuses treatment.

(d1) Except as provided in G.S. 90-21.4, discharge of a voluntarily admitted minor from treatment shall include notice to and consultation with the minor's legally responsible person and in no event shall a minor be discharged from treatment upon the minor's request alone.

(e) In the case of an involuntarily committed client, treatment measures other than those requiring express written consent as specified in subsection (f) of this section may be given despite the refusal of the client or the client's legally responsible person in the event of an emergency or when consideration of side effects related to the specific treatment measure is given and in the professional judgment, as documented in the client's record, of the treating physician and a second physician, who is either the director of clinical services of the facility, or that person's designee, either:

(1) The client, without the benefit of the specific treatment measure, is incapable of participating in any available treatment plan which will give the client a realistic opportunity of improving his condition;

(2) There is, without the benefit of the specific treatment measure, a significant possibility that the client will harm himself or others before improvement of the client's condition is realized.

(f) Treatment involving electroshock therapy, the use of experimental drugs or procedures, or surgery other than emergency surgery may not be given without the express and informed written consent of the client or the client's legally responsible person. This consent may be withdrawn at any time by the person who gave the consent. The Commission may adopt rules specifying other therapeutic and diagnostic procedures that require the express and informed written consent of the client or the client's legally responsible person prior to their initiation. (1973, c. 475, s. 1; c. 1436, ss. 6, 7; 1981, c. 328, ss. 1, 2; 1985, c. 589, s. 2; 1995, c. 336, s. 1.)

Editor's Note. — The subsection designation (d1) was assigned by the Revisor of Statutes, the designation in Session Laws 1995, c. 336, s. 1 having been (d)(1).

Effect of Amendments. — The 1995 amendment, effective October 1, 1995, and applicable to admissions on or after that date, substituted "the client's" for "his" throughout this section; added subsection (d1); and in subsection (e) substituted "that person's" for "his" in the introductory language, and "the client" for "him" in subdivision (e)(1).

§ 122C-60. Use of physical restraints or seclusion.

CASE NOTES

Standard of Liability. — Adopting the standard enunciated in Youngberg v. Romeo, 457 U.S. 307, 102 S. Ct. 2452, 73 L. Ed. 2d 28 (1982), the court held that so long as the requisite procedures were followed, and the decision to restrain a plaintiff, a voluntarily admitted patient at a state mental hospital, was an exercise of professional judgment, the defendants were not liable to the plaintiff for their actions. Alt v. Parker, 112 N.C. App. 307, 435 S.E.2d 773 (1993).

§ 122C-62. Additional rights in 24-hour facilities.

(a) In addition to the rights enumerated in G.S. 122C-51 through G.S. 122C-61, each adult client who is receiving treatment or habilitation in a 24-hour facility keeps the right to:

(1) Send and receive sealed mail and have access to writing material, postage, and staff assistance when necessary;

(2) Contact and consult with, at his own expense and at no cost to the facility, legal counsel, private physicians, and private mental health, developmental disabilities, or substance abuse professionals of his choice; and

(3) Contact and consult with a client advocate if there is a client advocate.

The rights specified in this subsection may not be restricted by the facility and each adult client may exercise these rights at all reasonable times.

(b) Except as provided in subsections (e) and (h) of this section, each adult client who is receiving treatment or habilitation in a 24-hour facility at all times keeps the right to:

(1) Make and receive confidential telephone calls. All long distance calls shall be paid for by the client at the time of making the call or made collect to the receiving party;

(2) Receive visitors between the hours of 8:00 a.m. and 9:00 p.m. for a period of at least six hours daily, two hours of which shall be after 6:00 p.m.; however visiting shall not take precedence over therapies;

(3) Communicate and meet under appropriate supervision with individuals of his own choice upon the consent of the individuals;

(4) Make visits outside the custody of the facility unless:

a. Commitment proceedings were initiated as the result of the client's being charged with a violent crime, including a crime involving an assault with a deadly weapon, and the respondent was found not guilty by reason of insanity or incapable of proceeding;

b. The client was voluntarily admitted or committed to the facility while under order of commitment to a correctional facility of the Department of Correction; or

c. The client is being held to determine capacity to proceed pursuant to G.S. 15A-1002;

A court order may expressly authorize visits otherwise prohibited by the existence of the conditions prescribed by this subdivision;

(5) Be out of doors daily and have access to facilities and equipment for physical exercise several times a week;

(6) Except as prohibited by law, keep and use personal clothing and possessions, unless the client is being held to determine capacity to proceed pursuant to G.S. 15A-1002;
(7) Participate in religious worship;
(8) Keep and spend a reasonable sum of his own money;
(9) Retain a driver's license, unless otherwise prohibited by Chapter 20 of the General Statutes; and
(10) Have access to individual storage space for his private use.

(c) In addition to the rights enumerated in G.S. 122C-51 through G.S. 122C-57 and G.S. 122C-59 through G.S. 122C-61, each minor client who is receiving treatment or habilitation in a 24-hour facility has the right to have access to proper adult supervision and guidance. In recognition of the minor's status as a developing individual, the minor shall be provided opportunities to enable him to mature physically, emotionally, intellectually, socially, and vocationally. In view of the physical, emotional, and intellectual immaturity of the minor, the 24-hour facility shall provide appropriate structure, supervision and control consistent with the rights given to the minor pursuant to this Article. The facility shall also, where practical, make reasonable efforts to ensure that each minor client receives treatment apart and separate from adult clients unless the treatment needs of the minor client dictate otherwise.

Each minor client who is receiving treatment or habilitation from a 24-hour facility has the right to:
(1) Communicate and consult with his parents or guardian or the agency or individual having legal custody of him;
(2) Contact and consult with, at his own expense or that of his legally responsible person and at no cost to the facility, legal counsel, private physicians, private mental health, developmental disabilities, or substance abuse professionals, of his or his legally responsible person's choice; and
(3) Contact and consult with a client advocate, if there is a client advocate.

The rights specified in this subsection may not be restricted by the facility and each minor client may exercise these rights at all reasonable times.

(d) Except as provided in subsections (e) and (h) of this section, each minor client who is receiving treatment or habilitation in a 24-hour facility has the right to:
(1) Make and receive telephone calls. All long distance calls shall be paid for by the client at the time of making the call or made collect to the receiving party;
(2) Send and receive mail and have access to writing materials, postage, and staff assistance when necessary;
(3) Under appropriate supervision, receive visitors between the hours of 8:00 a.m. and 9:00 p.m. for a period of at least six hours daily, two hours of which shall be after 6:00 p.m.; however visiting shall not take precedence over school or therapies;
(4) Receive special education and vocational training in accordance with federal and State law;
(5) Be out of doors daily and participate in play, recreation, and physical exercise on a regular basis in accordance with his needs;
(6) Except as prohibited by law, keep and use personal clothing and possessions under appropriate supervision, unless the

client is being held to determine capacity to proceed pursuant to G.S. 15A-1002;

(7) Participate in religious worship;

(8) Have access to individual storage space for the safekeeping of personal belongings;

(9) Have access to and spend a reasonable sum of his own money; and

(10) Retain a driver's license, unless otherwise prohibited by Chapter 20 of the General Statutes.

(e) No right enumerated in subsections (b) or (d) of this section may be limited or restricted except by the qualified professional responsible for the formulation of the client's treatment or habilitation plan. A written statement shall be placed in the client's record that indicates the detailed reason for the restriction. The restriction shall be reasonable and related to the client's treatment or habilitation needs. A restriction is effective for a period not to exceed 30 days. An evaluation of each restriction shall be conducted by the qualified professional at least every seven days, at which time the restriction may be removed. Each evaluation of a restriction shall be documented in the client's record. Restrictions on rights may be renewed only by a written statement entered by the qualified professional in the client's record that states the reason for the renewal of the restriction. In the case of an adult client who has not been adjudicated incompetent, in each instance of an initial restriction or renewal of a restriction of rights, an individual designated by the client shall, upon the consent of the client, be notified of the restriction and of the reason for it. In the case of a minor client or an incompetent adult client, the legally responsible person shall be notified of each instance of an initial restriction or renewal of a restriction of rights and of the reason for it. Notification of the designated individual or legally responsible person shall be documented in writing in the client's record.

(f) The Commission may adopt rules to implement subsection (e) of this section.

(g) With regard to clients being held to determine capacity to proceed pursuant to G.S. 15A-1002 or clients in a facility for substance abuse, and notwithstanding the prior provisions of this section, the Commission may adopt rules restricting the rights set forth under (b)(2), (b)(3), and (d)(3) of this section if restrictions are necessary and reasonable in order to protect the health, safety, and welfare of the client involved or other clients.

(h) The rights stated in subdivisions (b)(2), (b)(4), (b)(5), (b)(10), (d)(3), (d)(5) and (d)(8) may be modified in a general hospital by that hospital to be the same as for other patients in that hospital; provided that any restriction of a specific client's rights shall be done in accordance with the provisions of subsection (e) of this section. (1973, c. 475, s. 1; c. 1436, ss. 2-5, 8; 1985, c. 589, s. 2; 1989, c. 625, s. 10; 1995, c. 299, s. 2.)

Effect of Amendments. — The 1995 amendment, effective October 1, 1995, and applicable to client rights on or after that date, added "unless the client is being held to determine capacity to proceed pursuant to G.S. 15A-1002" in subdivisions (b)(6) and (d)(6); and substituted "(b)(2), (b)(3), and (d)(3)" for "(b)(2) and (d)(3)" in subsection (g).

§ 122C-65. Offenses relating to clients.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 122C-66. Protection from abuse and exploitation; reporting.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 4.

Organization and System for Delivery of Mental Health, Developmental Disabilities, and Substance Abuse Services.

Part 2. State, County and Area Authority.

§ 122C-112. Powers and duties of the Secretary.

(a) The Secretary shall:

(1) Enforce the provisions of this Chapter and the rules of the Commission and the Secretary;

(2) Assist counties and area authorities in the establishment and operation of community-based programs within catchment areas specified in rules adopted by the Commission;

(3) Operate State facilities and adopt rules pertaining to their operation;

(4) Promote a unified system of services for the citizens of this State by coordinating services provided in State facilities and area facilities;

(5) Approve the plans and budgets of an area authority and adopt rules pertaining to the content and format of these plans and budgets;

(6) Adopt rules governing the expenditure of all area authority funds;

(6a) Adopt rules to implement the appeal procedure authorized by G.S. 122C-151.2;

(7) Adopt rules for the establishment of single portal designation and approve an area as a single portal area;

(8) Except as provided in G.S. 122C-26(4), adopt rules establishing procedures for waiver of rules adopted by the Secretary under this Chapter;

(9) Notify the clerks of superior court of changes in the designation of State facility regions and of facilities designated under G.S. 122C-252;

(10) Promote public awareness and understanding of mental health, mental illness, developmental disabilities, and substance abuse;

(11) Administer and enforce rules that are conditions of participation in federal or State financial aid;

(12) Carry out G.S. 122C-361; and

(13) Ensure, in cooperation with other appropriate agencies, that all types of early intervention services specified in the "Individuals with Disabilities Education Act (IDEA), P.L. 102-119, the federal early intervention legislation, are available to all eligible infants and toddlers and their families to the extent funded by the General Assembly.

The Secretary shall coordinate and facilitate the development and administration of the early intervention system for eligible infants and toddlers and shall assign among the cooperating agencies the responsibility, including financial responsibility, for services. The Secretary shall be advised by the Interagency Coordinating Council for Children from Birth to Five with Disabilities and Their Families, established by G.S. 143B-179.5, and may enter into formal interagency agreements to establish the collaborative relationships with the Department of Environment, Health, and Natural Resources, the Department of Public Instruction, other appropriate agencies, and other public and private service providers necessary to administer the system and deliver the services.

The Secretary shall adopt rules to implement the early intervention system, in cooperation with all other appropriate agencies;

(14) Adopt rules to be followed in the determination of eligibility for, and to ensure the provision of services for, eligible assaultive and violent children as defined in G.S. 122C-3(13a); [and]

(15) Upon the death of any prospective or confirmed "Thomas S." class member as identified in "Thomas S. et al. vs. Britt", (C-C-82-0418-M, Western District) not residing in a State facility listed in G.S. 122C-181, investigate the circumstances leading to that death. The investigation shall analyze any unusual circumstances relating to the death. The Secretary shall adopt rules to implement this subsection. The Secretary shall have access to all medical records, hospital records, and records maintained by the State, any county, or any local agency necessary to carry out the purposes of this subsection, including police investigations data, medical examiner investigative data, health records, mental health records, and social services records.

(b) The Secretary may:

(1) Acquire by purchase or otherwise in the name of the Department equipment, supplies, and other personal property necessary to carry out the mental health, developmental disabilities, and substance abuse programs;

(2) Sponsor training opportunities in the fields of mental health, developmental disabilities, and substance abuse;

(3) Promote and conduct research in the fields of mental health, developmental disabilities, and substance abuse;

(4) Provide technical assistance for the development and improvement of prevention services;

(5) Receive donations of money, securities, equipment, supplies, or any other personal property of any kind or description which shall be used by the Secretary for the purpose of carrying out mental health, developmental disabilities, and substance abuse programs. Any donations shall be reported to the Office of State Budget and Management as determined by that office;

(6) Accept, allocate, and spend any federal funds for mental health, developmental disabilities, and substance abuse activities that may be made available to the State by the federal government. This Chapter shall be liberally construed in order that the State and its citizens may benefit fully from these funds. Any federal funds received shall be deposited with the State Treasurer and shall be appropriated by the General Assembly for the mental health, developmental disabilities, or substance abuse purposes specified;

(7) Enter agreements authorized by G.S. 122C-346;

(8) Accept, allocate, and spend funds from the United States Department of Defense to operate mental health demonstration projects for families of the uniformed services. Demonstration projects shall be operated through an area authority. The operation of these demonstration projects may be accomplished through subcontracts with one or more private sector providers; and

(9) Authorize funds for contracting with a person, firm, or corporation for aid or assistance in locating, recruiting, or arranging employment of health care professionals in any facility listed in G.S. 122C-181, notwithstanding the provisions of G.S. 126-18. (C.S., s. 6153; 1929, c. 265, s. 1; 1933, c. 342, s. 1; 1943, cc. 32, 164; 1945, c. 952, s. 9; 1947, c. 537, ss. 5, 6; 1957, c. 1232, s. 1; 1959, c. 348, s. 3; c. 1002, s. 3; c. 1028, ss. 1-3, 5; 1963, c. 451, s. 1; c. 1166, ss. 3, 6, 10; c. 1184, s. 6; 1965, c. 800, s. 1; c. 929, s. 3; 1969, c. 676, s. 2; 1971, c. 470, s. 1; 1973, c. 476, s. 133; c. 661; 1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, ss. 2-4, 23; 1981, c. 51, ss. 3, 4; c. 539, s. 1; 1983, c. 280; c. 383, s. 2; 1985, c. 589, s. 2; 1987, c. 720, s. 2; c. 830, s. 47(c); 1989, c. 625, s. 14; 1989 (Reg. Sess., 1990), c. 1003, s. 3; 1991, c. 689, s. 135; 1993, c. 321, s. 220(p); c. 487, s. 2; 1995, c. 249, s. 2; c. 498, s. 1.)

Editor's Note. —

Session Laws 1995, c. 249, s. 5, provides that rules adopted for Willie M. class members prior to July 1, 1995 shall remain in effect until amended or repealed by rules adopted for eligible assaultive and violent children.

For additional provisions concerning funding for Willie M. programs, see the main pamphlet.

Session Laws 1995, c. 498, s. 1, as originally enacted, added a subdivision (a)(14); however, this subdivision has been redesignated as (a)(15) at the direction of the Revisor of Statutes because of the prior addition of a subdivision (a)(14) by Session Laws 1995, c. 249, s. 2.

The bracketed word "and" was inserted in subdivision (a)(14) and the semicolons following subdivisions (a)(13) and (a)(14) were inserted at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws, 1995, c. 249, s. 2, effective July 1, 1995, added subdivision (a)(14).

Session Laws, 1995, c. 498, s. 1, effective July 27, 1995, and applicable to deaths occurring on or after that date, added subdivision (a)(15).

§ 122C-119.1. Area Authority board members' training.

All members of an area authority's board of directors shall receive initial orientation on board members' responsibilities and training provided by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department of Human Resources in fiscal management, budget development, and fiscal accountability. A member's refusal to be trained may be grounds for removal from the board. (1995, c. 507, s. 23.3.)

Editor's Note. — Session Laws 1995, c. 507, s. 28.13, made this section effective July 1, 1995.

Session Laws 1995, c. 507, s. 1.1, provides that the act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

§ 122C-124. Area Authority funding suspended.

The Secretary of the Department of Human Resources may suspend funding to any area authority with a revenue or expenditure budget variance of ten percent (10%) or a significant deterioration in the fund balance of the authority's general fund. A significant deterioration of fund balance is defined as a twenty-five percent (25%) decrease in the balance from one fiscal year to the next without the prior approval of the Department. Area authorities shall report any such revenue or expenditure variance or deterioration in fund balance to the Department of Human Resources within 30 days of its occurrence. In the event that funding is suspended, the Department of Human Resources may contract with, and make payments of Department funds on an interim basis directly to, a contract provider of the area authority to avoid the disruption of direct services to clients.

Upon suspension of funding, the Department shall, in conjunction with the area authority, develop and implement a corrective plan of action and provide notification to the area authority's board of directors of the plan. The Department shall also keep the county board of commissioners and the area authority's board of directors informed of any ongoing concerns or problems with the area authority's finances. (1995, c. 507, s. 23.2.)

Editor's Note. — Session Laws 1995, c. 507, s. 28.13, made this section effective July 1, 1995.

Session Laws 1995, c. 507, s. 1.1, provides that the act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

§ 122C-125. Area Authority financial failure; State assumption of financial control.

At any time that the Secretary of the Department of Human Resources determines that an area authority is in imminent danger of failing financially and of failing to provide direct services to clients, the Secretary may assume control of the financial affairs of the area authority and appoint an administrator to exercise the powers assumed. This assumption of control shall have the effect of divesting the area authority of its powers as to the adoption of budgets, expenditures of money, and all other financial powers conferred in the area authority by law. County funding of the area authority shall continue when the State has assumed control of the financial affairs of the area authority. At no time after the State has assumed this control shall a county withdraw funds previously obligated or appropriated to the area authority. The Secretary shall adopt rules to define imminent danger of failing financially and of failing to provide direct services to clients.

Upon assumption of financial control, the Department shall, in conjunction with the area authority, develop and implement a corrective plan of action and provide notification to the area authority's board of directors of the plan. The Department shall also keep the county board of commissioners and the area authority's board of directors informed of any ongoing concerns or problems with the area authority's finances. (1995, c. 507, s. 23.2.)

Editor's Note. — Session Laws 1995, c. 507, s. 28.13, made this section effective July 1, 1995.

Session Laws 1995, c. 507, s. 1.1, provides that the act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

§ 122C-126. Area authority caretakers appointed.

In the event that an area authority fails to comply with the corrective plan of action required pursuant to G.S. 122C-124 when funding is suspended or pursuant to G.S. 122C-125 when the State assumes financial control of the area authority, the Secretary of the Department of Human Resources shall appoint a caretaker administrator, a caretaker board of directors, or both.

The Secretary may assign any of the powers and duties of the director of the area authority and of the board of directors and the caretaker board to the caretaker administrator as it deems necessary and appropriate to continue to provide direct services to clients, including the powers as to the adoption of budgets, expenditures of money, and all other financial powers conferred on the area authority by law. County funding of the area authority shall continue when the State has assumed control of the financial affairs of the area authority. At no time after the State has assumed this control shall a county withdraw funds previously obligated or appropriated to the area authority. The caretaker administrator and the caretaker board shall perform all of these powers and duties. The Secretary may terminate the contract of any director when it appoints a caretaker administrator. The Administrative Procedure Act shall apply to any such decision. Neither party to any such contract shall be entitled to damages.

After a caretaker board has been appointed, the General Assembly shall consider, at its next regular session, the future governance of the identified area authority. (1995, c. 507, s. 23.2.)

Editor's Note. — Session Laws 1995, c. 507, s. 28.13, made this section effective July 1, 1995.

Session Laws 1995, c. 507, s. 1.1, provides that the act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

Part 4. Area Facilities.

§ 122C-142.1. Substance abuse services for those convicted of driving while impaired or driving while less than 21 years old after consuming alcohol or drugs.

(a) Services. — An area authority shall provide, directly or by contract, the substance abuse services needed by a person to obtain a certificate of completion required under G.S. 20-17.6 as a condition for the restoration of a drivers license. A person may obtain the required services from an area facility, from a private facility that has complied with this subsection, or, with the approval of the Department, from an agency that is located in another state. Before a private facility located in this State provides the substance abuse services needed by a person to obtain a certificate of completion, the facility shall notify both the designated area facility for the catchment area in which it is located and the Department of its intent to provide the services and shall agree to comply with the laws and rules concerning these services that apply to area facilities.

(b) Assessments. — To conduct a substance abuse assessment, a facility shall give a client a standardized test approved by the Department to determine chemical dependency and shall conduct a clinical interview with the client. Based on the assessment, the facility shall recommend that the client either attend an alcohol and drug education traffic (ADET) school or obtain treatment. A recommendation shall be reviewed and signed by a certified alcoholism, drug abuse, or substance abuse counselor, as defined by the Commission, a Certified Substance Abuse Counselor, or by a physician certified by the American Society of Addiction Medicine (ASAM).

(c) School or Treatment. — Attendance at an ADET school is required if none of the following applies and completion of a treatment program is required if any of the following applies:

(1) The person took a chemical test at the time of the offense that caused the person's license to be revoked and the test revealed that the person had an alcohol concentration at any relevant time after driving of at least 0.15.

(2) The person has a prior conviction of an offense involving impaired driving.

(3) The substance abuse assessment identifies a substance abuse disability.

(d) Standards. — An ADET school shall offer the curriculum established by the Commission and shall comply with the rules adopted by the Commission. A substance abuse treatment program offered to a person who needs the program to obtain a certificate of completion shall comply with the rules adopted by the Commission.

(e) Certificate of Completion. — Any facility that issues a certificate of completion shall forward the original certificate of completion to the Department. The Department shall review the certificate of completion for accuracy and completeness. If the Department finds the certificate of completion to be accurate and complete, the

Department shall forward it to the Division of Motor Vehicles of the Department of Transportation. If the Department finds the certificate of completion is not accurate or complete, the Department shall return the certificate of completion to the area facility for appropriate action.

(f) Fees. — A person who has a substance abuse assessment conducted for the purpose of obtaining a certificate of completion shall pay to the assessing agency a fee of fifty dollars ($50.00). A person shall pay to a treatment facility or school a fee of seventy-five dollars ($75.00). If the defendant is treated by an area mental health facility, G.S. 122C-146 applies after receipt of the seventy-five dollar ($75.00) fee.

A facility that provides to a person who is required to obtain a certificate of completion a substance abuse assessment, an ADET school, or a substance abuse treatment program may require the person to pay a fee required by this subsection before it issues a certificate of completion. As stated in G.S. 122C-146, however, an area facility may not deny a service to a person because the person is unable to pay.

An area facility shall remit to the Department five percent (5%) of each fee paid to the area facility under this subsection by a person who attends an ADET school conducted by the area facility. The Department may use amounts remitted to it under this subsection only to support, evaluate, and administer ADET schools.

(g) Out-of-State Services. — A person may obtain a substance abuse service needed to obtain a certificate of completion from a provider located in another state if the service offered by that provider is substantially similar to the service offered by a provider located in this State. A person who obtains a service from a provider located in another state is responsible for paying any fees imposed by the provider.

(h) Rules. — The Commission may adopt rules to implement this section. In developing rules for determining when a person needs to be placed in a substance abuse treatment program, the Commission shall consider diagnostic criteria such as those contained in the most recent revision of the Diagnostic and Statistical Manual or used by the American Society of Addiction Medicine (ASAM).

(i) Report. — The Department shall submit an annual report on substance abuse assessments to the Joint Legislative Commission on Governmental Operations. The report is due by February 1. Each facility that provides services needed by a person to obtain a certificate of completion shall file an annual report with the Department by October 1 that contains the information the Department needs to compile the report the Department is required to submit under this section.

The report submitted to the Joint Legislative Commission on Governmental Operations shall include all of the following information and any other information requested by that Commission:

(1) The number of persons required to obtain a certificate of completion during the previous fiscal year as a condition of restoring the person's drivers license under G.S. 20-17.6.

(2) The number of substance abuse assessments conducted during the previous fiscal year for the purpose of obtaining a certificate of completion.

(3) Of the number of assessments reported under subdivision (2) of this subsection, the number recommending atten-

dance at an ADET school, the number recommending treatment, and, for those recommending treatment, the level of treatment recommended.

(4) Of the number of persons recommended for an ADET school or treatment under subdivision (3) of this subsection, the number who completed the school or treatment.

(5) The number of substance abuse assessments conducted by each facility and, of these assessments, the number that recommended attendance at an ADET school and the number that recommended treatment.

(6) The fees paid to a facility for providing services for persons to obtain a certificate of completion and the facility's costs in providing those services. (1995, c. 496, ss. 10, 13.)

Editor's Note. — Session Laws 1995, c. 496, s. 14, provided that this section became effective January 1, 1996, and was applicable to offenses occurring on or after that date, and that s. 13, which substituted "less than 21 years old" for "a provisional licensee" in the catchline, became effective only if House Bill 353 of the 1995 General Assembly was enacted. House Bill 353 was ratified as Session Laws 1995, c. 506, on July 28, 1995.

§ 122C-143.2. Annual Memorandum of Agreement.

Editor's Note. —
The reference in subsection (c) of this section to G.S. 147.1(c)(2) may be intended to refer to § 122C-147.1. However, § 122C-147.1 does not have a subdivision (c)(2).

§ 122C-147. Financing and title of area authority property.

(a) Repealed by Session Laws 1993, c. 321, s. 220(i).

(b) Unless otherwise specified by the Secretary, State appropriations to area authorities shall be used exclusively for the operating costs of the area authority; provided however:

(1) The Secretary may specify that designated State funds may be used by area authorities (i) for the purchase, alteration, improvement, or rehabilitation of real estate to be used as a facility or (ii) in contracting with a private, nonprofit corporation or with another governmental entity that operates facilities for the mentally ill, developmentally disabled, or substance abusers and according to the terms of the contract between the area authority and the private, nonprofit corporation or with the governmental entity, for the purchase, alteration, improvement, rehabilitation of real estate or, to make a lump sum down payment or periodic payments on a real property mortgage in the name of the private, nonprofit corporation or governmental entity.

(2) Upon cessation of the use of the facility by the area authority, if operated by the area authority, or upon termination, default, or nonrenewal of the contract if operated by a contractual agency, the Department shall be reimbursed in accordance with rules adopted by the Secretary for the Department's participation in the purchase of the facility.

(c) All real property purchased for use by the area authority shall be provided by local or federal funds unless otherwise allowed under subsection (b) of this section or by specific capital funds appropriated by the General Assembly. The title to this real property and the authority to acquire it is held by the county where the property is located. The authority to hold title to real property and the authority to acquire it, including the area authority's authority to finance its acquisition by an installment contract under G.S. 160A-20, may be held by the area authority or by the contracting governmental entity with the approval of the board or boards of commissioners of all the counties that comprise the area authority. The approval of a board of county commissioners shall be by resolution of the board and may have any necessary or proper conditions, including provisions for distribution of the proceeds in the event of disposition of the property by the area authority. Real property may not be acquired by means of an installment contract under G.S. 160A-20 unless the Local Government Commission has approved the acquisition. No deficiency judgment may be rendered against any unit of local government in any action for breach of a contractual obligation authorized by this subsection, and the taxing power of a unit of local government is not and may not be pledged directly or indirectly to secure any moneys due under a contract authorized by this subsection.

(d) The area authority may lease real property.

(e) Equipment necessary for the operation of the area authority may be obtained with local, State, federal, or donated funds, or a combination of these.

(f) The area authority may acquire or lease personal property. An acquisition may be accomplished by an installment contract under G.S. 160A-20 or by a lease-purchase agreement. An area authority may not acquire personal property by means of an installment contract under G.S. 160A-20 without the approval of the board or boards of commissioners of all the counties that comprise the area authority. The approval of a board of county commissioners shall be by resolution of the board and may have any necessary or proper conditions, including provisions for distribution of the proceeds in the event of disposition of the property by the area authority. The area authority may not acquire personal property by means of an installment contract under G.S. 160A-20 without the approval of the Local Government Commission, when required by that statute. No deficiency judgment may be rendered against any unit of local government in any action for breach of a contractual obligation authorized by this subsection, and the taxing power of a unit of local government is not and shall not be pledged directly or indirectly to secure any moneys due under a contract authorized by this subsection. Title to personal property may be held by the area authority.

(g) All area authority funds shall be spent in accordance with the rules of the Secretary. Failure to comply with the rules is grounds for the Secretary to stop participation in the funding of the particular program. The Secretary may withdraw funds from a specific program of services not being administered in accordance with an approved plan and budget after written notice and subject to an appeal as provided by G.S. 122C-145 and Chapter 150B of the General Statutes.

(h) Notwithstanding subsection (b) of this section and in addition to the purposes listed in that subsection, the funds allocated by the Secretary for services for members of the class identified in Willie M., et al. vs. Hunt, et al. (C-C-79-294, Western District) may be used for the purchase, alteration, improvement, or rehabilitation of real property owned or to be owned by a nonprofit corporation or by another governmental entity and used or to be used as a facility.

(i) Notwithstanding subsection (c) of this section and in addition to the purposes listed in that subsection, funds allocated by the Secretary for services for members of the class identified in Willie M., et al. vs. Hunt, et al. (C-C-79-294, Western District) may be used for the purchase, alteration, improvement, or rehabilitation of real property used by an area authority as long as the title to the real property is vested in the county where the property is located or is vested in another governmental entity. If the property ceases to be used in accordance with the annual plan, the unamortized part of funds spent under this subsection for the purchase, alteration, improvement, or rehabilitation of real property shall be returned to the Department, in accordance with the rules of the Secretary.

(j) Notwithstanding subsection (c) of this section the area authority, with the approval of the Secretary, may use local funds for the alteration, improvement, and rehabilitation of real property owned by a nonprofit corporation or by another governmental entity under contract with the area authority and used or to be used as a facility. Prior to the use of county appropriated funds for this purpose, the area authority shall obtain consent of the board or boards of commissioners of all the counties that comprise the area authority. The consent shall be by resolution of the affected board or boards of county commissioners and may have any necessary or proper conditions, including provisions for distribution of the proceeds in the event of disposition of the property. (1973, c. 476, s. 133; c. 613; 1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, s. 29; 1981, c. 51, s. 3; 1983, c. 5; c. 25; c. 402; 1985, c. 589, s. 2; 1987, c. 720, s. 3; c. 784; 1989, c. 625, s. 17; 1993, c. 321, s. 220(h), (i); 1993 (Reg. Sess., 1994), c. 592, s. 1; 1995, c. 305, s. 1.)

Editor's Note. —

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 25.17 amends Session Laws 1993, c. 321, s. 208 by adding a new subsection to read:

"(j) The Secretary of the Department of Human Resources shall adopt rules to be followed in the provision of services for disabled, violent, and assaultive children who have not reached their eighteenth birthday. These rules shall allow for the continuation of services to any child the Secretary determines is being appropriately served until the end of the fiscal year in which the child reaches the age of 18 or until six months after the child reaches the age of 18, whichever period is longer."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

Session Laws 1995, c. 324, s. 23.20, provides for the funding of treatment and education programs for children under the age of 18 who suffer from emotional, mental, or neurological handicaps accompanied by violent or assaultive behavior, identified as a Class in the case of Willie M., et al v. Hunt, et al.; s. 23.20(b) provides that funds appropriated by the General Assembly to the Department of Human Resources for serving members of the Willie M. Class shall be expended only for programs serving members of that Class identified in Willie M., et al v. Hunt, et al., including evaluations of potential Class members, and that the Department shall reallocate these funds among services to Class members during the year as it deems advisable; s. 23.20(d) provides for the Department to continue to implement its prospective unit cost reimbursement system, to ensure that unit cost rates reflect reasonable costs, and to reduce and/or cap rates to programs which are significantly higher than those rates paid to other programs for the same service; s. 23.20(d1) provides for review by the Department of cases whose annual cost is anticipated to be in excess of 150% of the average annual per client expenditure of the previous fiscal year; s. 23.20(e1) provides for the Department to document and assess individual Class members' progress through the continuum of services; and s. 23.20(i) provides that if the Department determines a local program is not providing appropriate services, the Department may ensure the provision of these services through contracts with public or private agencies or by direct operation of the programs.

Session Laws 1995, c. 324, s. 23.20(e), provides that the Department of Human Resources and the Department of Public Education shall submit, by May 1 of each fiscal year, a joint report to the Governor and the General Assembly on the progress achieved in serving members of the Willie M. Class, which shall include specified data for each county; and s. 23.20(f) provides that those departments shall provide periodic reports of expenditures and program effectiveness on behalf of the Willie M. Class to the Fiscal Research Division, which shall include explanations of measures they have taken to control and reduce program expenditures.

Session Laws 1995, c. 324, s. 23.20(h), provides that the use of unexpended Willie M. funds from prior fiscal years to cover current or future needs of the Willie M. program is not precluded by the limitation that no funds be expended on placement and services for Willie M. Class members except funds specifically appropriated by the General Assembly for members, or funds for placement or services for which members are otherwise eligible; and that these expenditures shall not be subject to the requirements of G.S. 143-18.

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 1, 1994, in subsection (c), in the third sentence inserted "including the authority to finance its acquisition by an installment contract under G.S. 160A-20", substituted "approval" for "consent" and substituted "that" for "which", in the fourth sentence substituted "The approval of a board of county commissioners" for "The consent to this variation", deleted "affected" preceding "board" and deleted "or boards of county commissioners" following "board", added the fifth and sixth sentences; and in subsection (f), in the first sentence deleted "including by" from the end, in the second sentence added "An acquisition may be accomplished by an installment contract under G.S. 160A-20 or by a" at the beginning and added the third through sixth sentences.

The 1995 amendment, effective July 1, 1995, and applicable to funds used for facilities on or after that date and to contracts entered into on or after that date, deleted "24 hour and day" preceding "facility" in subdivision (b)(1), twice in subdivision (b)(2), and in the first sentence of subsection (j), and preceding "facilities for the mentally ill" in subdivision (b)(1); in subdivision (b)(1) added "or with another governmental entity" following the first occurrence of "nonprofit corporation", "or with the governmental entity" following the second occurrence of "nonprofit corporation", and "or governmental entity" following the third occurrence of "nonprofit corporation"; in subsection (c), added "or by specific capital funds appropriated by the General Assembly" in the first sentence, in the third sentence added "area authority's" preceding "authority to finance", and "or by the contracting governmental entity"; added "or by another governmental entity"; substituted "shall not be pledged" for "may not be pledged" in the next to last sentence of subsection (f); inserted "or by another governmental entity" in subsection (h); and in subsection (j) added "or by another governmental entity" in the first sentence, and in the second sentence substituted "shall" for "must", and "that" for "which".

§ 122C-147.2. Purchase of services and reimbursement rates.

Editor's Note. — Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

Session Laws 1995, c. 324, s. 23.17, provides: "To ensure uniformity in rates charged to area programs and funded with State-allocated resources, the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department of Human Resources may require a private agency that provides services under contract with two or more area programs, except for hospital services that have an established Medicaid rate, to complete an agency-wide uniform cost finding in accordance with G.S. 122C-143.2(a) and G.S. 122C-147.2. The resulting cost shall be the maximum included for the private agency in the contracting area program's unit cost finding."

§ 122C-151.1: Repealed by Session Laws 1993, c. 321, s. 220(n), as amended by Session Laws 1993 (Regular Session, 1994), c. 591, s. 7, effective July 1, 1995.

§ 122C-158. Privacy of personnel records.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Part 6. Quality Assurance.

§ 122C-192. Review and protection of information.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Part 7. Contested Case Hearings for Eligible Assaultive and Violent Children.

§ 122C-194. Declaration of policy.

It is the State's policy to provide procedures for the contested case hearing for an eligible assaultive and violent child, as defined in G.S. 122C-3(13a) and to his or her parent, advocate, or legal guardian. Such procedures shall also be available to any child who has been determined ineligible for services for eligible assaultive and violent children and to his or her parent, advocate, or legal guardian for purposes of appealing the denial of eligibility. (1995, c. 249, s. 3.)

Editor's Note. — Session Laws 1995, c. 249, s. 6, made this Part effective July 1, 1995.

Session Laws 1995, c. 249, s. 5, provides that rules adopted for Willie M. class members prior to July 1, 1995 shall remain in effect until amended or repealed by rules adopted for eligible assaultive and violent children.

§ 122C-195. Scope and effect.

(a) The parent, guardian, or advocate may obtain review of proposed decisions on the following grounds:

(1) The child has not been identified and evaluated or has been incorrectly identified and evaluated;

(2) The child's Individual Habilitation Plan (I.H.P.), services, or placement are not appropriate to meet the child's needs;

(3) The plan is not being implemented;

(4) The services provided are other than those specified in the service plan, are not provided with sufficient intensity or continuity to meet the child's needs, or have not been initiated or provided in a timely, regular, or competent manner; or

(5) The child's needs and capabilities have not been timely, thoroughly, or accurately assessed.

(b) A local or State agency may obtain review as provided by this section if a parent, guardian, or advocate refuses to consent to the evaluation of the child.

(c) Except as otherwise provided in this section, the administrative review shall be initiated and conducted in accordance with Article 3 of Chapter 150B of the General Statutes, the Administrative Procedure Act. The hearing shall be closed to the public unless the parent, guardian, or advocate requests in writing that the hearing be open to the public. (1995, c. 249, s. 3.)

§ 122C-196. Prior notice.

(a) Written notice shall be given to the parent, guardian, or advocate of an eligible assaultive and violent child, within a reasonable time before the local or State agency:

(1) Proposes to initiate or change the identification/eligibility, evaluation/assessment, I.H.P., treatment provisions, services, or placement of the child; or

(2) Refuses to initiate or change the identification/eligibility, evaluation/assessment, I.H.P., treatment provisions, services, or placement requested by the parent, guardian, or advocate on behalf of a child.

(b) The specific form and content of the notice shall be governed by rules adopted by the Secretary but shall include:

(1) A full explanation of all procedural safeguards including the right to mediation, impartial contested case hearing rights (administrative review), the opportunity to examine records, an independent evaluation, confidentiality, and the right to be represented by counsel;

(2) A description of the action proposed or refused by the local or State agency, an explanation of why the agency proposed

or refused to take the action, and a description of any options the agency considered and the reasons why those options were rejected; and

(3) A description of each evaluation procedure, test, record, or report the local or State agency uses as a basis for the proposal, refusal, or denial.

(c) The local or State agency shall document that the notice has been sent to and received by the parent, guardian, or advocate. (1995, c. 249, s. 3.)

§ 122C-197. Mediation.

(a) Prior to the filing of a petition for contested case review, mediation of disputes is voluntary but encouraged.

(b) When such a request for mediation has been made by the parent, guardian, or advocate, the director of the area authority or the director of the designated lead agency shall meet, or designate an assistant or associate to meet, with the parent, guardian, or advocate, the local interagency committee, and the regional consultant/service manager for the Department of Public Instruction and the Department of Human Resources to mediate the dispute.

(c) The meeting shall be informal and nonadversarial, as required by G.S. 150B-22.

(d) Mediation of the disagreement shall occur within 10 working days of the initiation of the mediation process by the parent, guardian, or advocate. If successful mediation does not occur within 10 working days, the parent, guardian, or advocate may file a written petition with the Office of Administrative Hearings for a contested case hearing in accordance with G.S. 150B-23. (1995, c. 249, s. 3.)

§ 122C-198. Decision of the administrative law judge.

Following the contested case hearing, the administrative law judge shall make a decision regarding the issues set forth in G.S. 122C-195(a). The decision shall contain findings of fact and conclusions of law. Notwithstanding the provisions of Chapter 150B of the General Statutes, the decision of the administrative law judge becomes final and not subject to further review unless appealed to the Review Officer as provided in G.S. 122C-199. A copy of the administrative law judge's decision shall be served upon each party, and a copy shall be furnished to the attorneys of record. The written notice shall contain a statement informing the parties of the availability of appeal and the 30-day limitations period for appeal, as set forth in Chapter 150B of the General Statutes. (1995, c. 249, s. 3.)

§ 122C-199. Administrative review by Review Officer.

(a) When there is an appeal by either party of the decision of the administrative law judge, an impartial Review Officer for the review will be appointed by the Secretary of the Department of Human Resources.

(b) The Review Officer shall be selected from a pool of review officers who have been approved, meet qualifications, and perform a review pursuant to rules adopted by the Secretary for this purpose.

(c) If the Review Officer decides to hold a hearing to receive additional evidence, all rights prescribed by Chapter 150B of the General Statutes to an administrative hearing apply.

(d) The decision of the Review Officer shall contain findings of fact and conclusions of law and becomes final unless an aggrieved party brings a civil action pursuant to Article 4 of Chapter 150B of the General Statutes. A copy of the decision shall be served upon each party, and a copy shall be furnished to the attorneys of record. The written notice shall contain a statement informing the parties of the right to file a civil action and the 30-day limitations period for filing a civil action pursuant to Article 4 of Chapter 150B of the General Statutes.

(e) Any party aggrieved by the decision of the Review Officer may file a petition for judicial review under Chapter 150B of the General Statutes in State court within 30 days after receipt of notice of the decision. (1995, c. 249, s. 3.)

§ 122C-200. Enforcing decision.

The Secretary shall implement the final decision of the administrative law judge, if not appealed pursuant to G.S. 122C-199 or the final decision of the review, by ordering the local or State agency:

(1) To make a child eligible for class membership; and/or

(2) To provide a child with appropriate services. (1995, c. 249, s. 3.)

ARTICLE 5.

Procedures for Admission and Discharge of Clients.

Part 1. General Provisions.

§ 122C-210.1. Immunity from liability.

CASE NOTES

Exercise of Professional Judgment. — Adopting the standard enunciated in Youngberg v. Romeo, 457 U.S. 307, 102 S. Ct. 2452, 73 L. Ed. 2d 28 (1982), the court held that so long as the requisite procedures were followed, and the decision to restrain plaintiff, a voluntarily admitted patient at a state mental hospital, was an exercise of professional judgment, the defendants were not liable to the plaintiff for their actions. Alt v. Parker, 112 N.C. App. 307, 435 S.E.2d 773 (1993).

Part 7. Involuntary Commitment of the Mentally Ill and the Mentally Retarded with Behavior Disorders; Facilities for the Mentally Ill.

§ 122C-261. Affidavit and petition before clerk or magistrate; custody order.

CASE NOTES

Cited in In re Woodie, 116 N.C. App. 425, 448 S.E.2d 142 (1994).

§ 122C-262. Special emergency procedure for individuals needing immediate hospitalization.

CASE NOTES

Defendant required immediate hospitalization to prevent harm to himself, pursuant to this section, evidenced by the testimony that when appellant abruptly left the doctor's office, he said he was going to kill himself. In re Woodie, 116 N.C. App. 425, 448 S.E.2d 142 (1994).

§ 122C-266. Inpatient commitment; second examination and treatment pending hearing.

CASE NOTES

Proof Sufficient for Finding of "Dangerous to Self." — The doctor's findings on the examination report and testimony at the involuntary commitment hearing were sufficient proof that appellant fit the category of one who was "dangerous to self." In re Woodie, 116 N.C. App. 425, 448 S.E.2d 142 (1994).

§ 122C-268. Inpatient commitment; district court hearing.

CASE NOTES

Cited in In re Woodie, 116 N.C. App. 425, 448 S.E.2d 142 (1994).

§ 122C-268.1. Inpatient commitment; hearing following automatic commitment.

(a) A respondent who is committed pursuant to G.S. 15A-1321 shall be provided a hearing, unless waived, before the expiration of 50 days from the date of his commitment.

(b) The district attorney in the county in which the respondent was found not guilty by reason of insanity may represent the State's interest at the hearing, rehearings, and supplemental rehearings.

Notwithstanding the provisions of G.S. 122C-269, if the district attorney elects to represent the State's interest, upon motion of the district attorney, the venue for the hearing, rehearings, and supplemental rehearings shall be the county in which the respondent was found not guilty by reason of insanity. If the district attorney declines to represent the State's interest, then the representation shall be determined as follows. An attorney, who is a member of the staff of the Attorney General assigned to one of the State's facilities for the mentally ill or the psychiatric service of the University of North Carolina Hospitals at Chapel Hill, may represent the State's interest at commitment hearings, rehearings, and supplemental hearings. Alternatively, the Attorney General may, in his discretion, designate an attorney who is a member of his staff to represent the State's interest at any commitment hearing, rehearing, or supplemental hearing.

(c) The clerk shall give notice of the time and place of the hearing as provided in G.S. 122C-264(d1).

(d) The respondent shall be represented by counsel of his choice, or if he is indigent within the meaning of G.S. 7A-450 or refuses to retain counsel if financially able to do so, he shall be represented by counsel appointed by the court.

(e) With the consent of the court, counsel may in writing waive the presence of the respondent.

(f) Certified copies of reports and findings of physicians and psychologists and previous and current medical records are admissible in evidence, but the respondent's right to confront and cross-examine witnesses may not be denied.

(g) The hearing shall take place in the trial division in which the original trial was held. The hearing shall be open to the public. For purposes of this subsection, "trial division" means either the superior court division or the district court division of the General Court of Justice.

(h) A copy of all documents admitted into evidence and a transcript of the proceedings shall be furnished to the respondent on request by the clerk upon the direction of the presiding judge. If the respondent is indigent, the copies shall be provided at State expense.

(i) The respondent shall bear the burden to prove by a preponderance of the evidence that he (i) no longer has a mental illness as defined in G.S. 122C-3(21), or (ii) is no longer dangerous to others as defined in G.S. 122C-3(11)b. If the court is so satisfied, then the court shall order the respondent discharged and released. If the court finds that the respondent has not met his burden of proof, then the court shall order that inpatient commitment continue at a 24-hour facility designated pursuant to G.S. 122C-252 for a period not to exceed 90 days. The court shall make a written record of the facts that support its findings.

(j) Nothing in this section shall limit the respondent's right to habeas corpus relief. (1991, c. 37, s. 2; 1991 (Reg. Sess., 1992), c. 1034, ss. 2, 3; 1995, c. 140, s. 1.)

Effect of Amendments. — The 1995 amendment, effective June 1, 1995, added the second sentence in subsection (b).

CASE NOTES

Constitutionality. — Subsection (i) of this section and § 122C-276.1(c) do not violate the due process of equal protection clauses of the federal and State Constitutions. In re Hayes, 111 N.C. App. 384, 432 S.E.2d 862, appeal dismissed, 335 N.C. 173, 436 S.E.2d 376 (1993).

Amendment made in 1991 to subsection (i) of this section and § 122C-276.1(c), which required respondent to bear the burden of proof to show that he was no longer dangerous or mentally ill and opened the hearing to the public, were procedural changes that did not violate substantive rights or protections though they could have disadvantaged respondent. Therefore, there was no violation of the Ex Post Facto Clause. In re Hayes, 111 N.C. App. 384, 432 S.E.2d 862, appeal dismissed, 335 N.C. 173, 436 S.E.2d 376 (1993).

§ 122C-269. Venue of hearing when respondent held at a 24-hour facility pending hearing.

(a) In all cases where the respondent is held at a 24-hour facility pending hearing as provided in G.S. 122C-268, G.S. 122C-268.1, 122C-276.1, or 122C-277(b1), unless the respondent through counsel objects to the venue, the hearing shall be held in the county in which the facility is located. Upon objection to venue, the hearing shall be held in the county where the petition was initiated, except as otherwise provided in subsection (c) of this section.

(b) An official of the facility shall immediately notify the clerk of superior court of the county in which the facility is located of a determination to hold the respondent pending hearing. That clerk shall request transmittal of all documents pertinent to the proceedings from the clerk of superior court where the proceedings were initiated. The requesting clerk shall assume all duties set forth in G.S. 122C-264. The requesting clerk shall appoint as counsel for indigent respondents the counsel provided for in G.S. 122C-268(d).

(c) Upon motion of any interested person, the venue of an initial hearing described in G.S. 122C-268(c) or G.S. 122C-268.1 or a rehearing required by G.S. 122C-276(b), G.S. 122C-276.1, or subsections (b) or (b1) of G.S. 122C-277 shall be moved to the county in which the respondent was found not guilty by reason of insanity or incapable of proceeding when the convenience of witnesses and the ends of justice would be promoted by the change. (1975, 2nd Sess., c. 983, s. 133; 1981, c. 537, s. 6; 1983, c. 380, s. 7; 1985, c. 589, s. 2; 1991, c. 37, ss. 11, 12; 1995, c. 140, s. 2.)

Effect of Amendments. — The 1995 amendment, effective June 1, 1995, deleted "district court" following "Venue of" in the catchline.

§ 122C-276.1. Inpatient commitment; rehearings for respondents who are insanity acquittees.

CASE NOTES

Constitutionality. — Subsection (c) of this section and § 122C-268.1(i) do not violate the due process of equal protection clauses of the federal and State Constitutions. In re Hayes, 111 N.C. App. 384, 432 S.E.2d 862, appeal dismissed, 335 N.C. 173, 436 S.E.2d 376 (1993).

Amendment made in 1991 to subsection (c) of this section and § 122C-268.1(i), which required respondent to bear the burden of proof to show that he was no longer dangerous or mentally ill and opened the hearing to the public were procedural changes that did not violate substantive rights or protections though they could have disadvantaged respondent. Therefore, there was no violation of the Ex Post Facto Clause. In re Hayes, 111 N.C. App. 384, 432 S.E.2d 862, appeal dismissed, 335 N.C. 173, 436 S.E.2d 376 (1993).

Part 9. Public Intoxication.

§ 122C-303. Use of jail for care for intoxicated individual.

CASE NOTES

Cited in Davis v. Town of Southern Pines, 116 N.C. App. 663, 449 S.E.2d 240 (1994), cert. denied, 339 N.C. 737, 454 S.E.2d 648 (1995).

Article 6.

Special Provisions.

Part 1. Camp Butner and Community of Butner.

§ 122C-406. Violations made misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Part 2. Black Mountain Joint Security Force.

§ 122C-421. Joint security force.

(a) The Secretary may designate one or more special police officers who shall make up a joint security force to enforce the law of North Carolina and any ordinance or regulation adopted pursuant to G.S. 143-116.6 or G.S. 143-116.7 or pursuant to the authority granted the Department by any other law on the territory of the Black Mountain Center, the Alcohol Rehabilitation Center, and the Juvenile Evaluation Center, all in Buncombe County. These special police officers have the same powers as peace officers now vested in sheriffs within the territory embraced by the named centers. These special police officers shall also have the power prescribed by G.S. 7A-571(a)(4) outside the territory embraced by the named centers but within the confines of Buncombe County. These special police officers may arrest persons outside the territory of the named centers but within the confines of Buncombe County when the person arrested has committed a criminal offense within that territory, for which the officers could have arrested the person within that territory, and the arrest is made during the person's immediate and continuous flight from that territory.

(b) These special police officers may exercise any and all of the powers enumerated in this Part upon or in pursuit from the property formerly occupied by the Black Mountain Center and transferred to the Department of Correction by Senate Bill 388 and House Bill 709 of the 1985 Session of the General Assembly. These special police officers shall exercise said powers upon the property transferred to the Department of Correction only by agreement of the Departments of Correction and Human Resources. (1983 (Reg. Sess., 1984), c. 1116, s. 30; 1985, c. 408, ss. 3, 5; c. 589, s. 2; 1995, c. 391, s. 3.)

Editor's Note. — Session Laws 1994, Extra Session, c. 24, s. 37, effective March 26, 1994, provides: "The Secretary of the Department of Human Resources shall designate the Director of the Juvenile Evaluation Center as the Director of the Joint Security Force established in G.S. 122C-421, serving the territory of the Black Mountain Center, the Alcohol Rehabilitation Center, and the Juvenile Evaluation Center, all in Buncombe County, and having the power prescribed by G.S. 7A-571(4) and G.S. 122C-421 outside the territory embraced by the named centers but within the confines of Buncombe County."

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Effect of Amendments. — The 1995 amendment, effective October 1, 1995, and applicable to physical custody exercised on or after that date, in subsection (a) substituted "G.S. 7A-571(a)(4)" for "G.S. 7A-571(4)" in the third sentence, and made a stylistic change in the last sentence.

Chapter 122D.

North Carolina Agricultural Finance Act.

Sec.
122D-4. North Carolina Agricultural Finance Authority.
122D-6. General powers of Authority.
122D-14. Exemption from taxes.

§ 122D-1. Short title.

Editor's Note. —

Session Laws 1993, c. 561, s. 97 amended Session Laws 1985, c. 1011, s. 3 to read: "Funds appropriated to the Department of Agriculture, Reserve for Farm Loans shall be used for the purposes set out in this act, other than the administration of Chapter 122D of the General Statutes. Interest on these funds and interest received from loans of these funds may be used for any of the purposes set out in this act, including the administration of Chapter 122D of the General Statutes."

Session Laws 1993, c. 561, s. 23.1, as added by Session Laws 1994, Extra Session, c. 24, s. 54, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

§ 122D-4. North Carolina Agricultural Finance Authority.

(a) The North Carolina Agricultural Finance Authority, a body politic and corporate, is hereby created within the Department of Agriculture. The Authority shall be constituted a public agency and an instrumentality of the State for the performance of essential public functions.

(b) **(Applicable until January 1, 1997)** The Authority shall be composed of 10 members. The Commissioner shall serve ex officio, with the same rights and privileges, including voting rights, as other members. The other nine members shall be appointed in the following manner:

(1) Three members appointed by the General Assembly upon the recommendation of the Speaker of the House under G.S. 120-121;
(2) Three members appointed by the General Assembly upon the recommendation of the President of the Senate under G.S. 120-121; and
(3) Three members appointed by the Governor.

(b) **(Applicable January 1, 1997)** The Authority shall be composed of 10 members. The Commissioner shall serve ex officio, with the same rights and privileges, including voting rights, as other members. The other nine members shall be appointed in the following manner:

(1) Three members appointed by the General Assembly upon the recommendation of the Speaker of the House under G.S. 120-121;
(2) Three members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate under G.S. 120-121; and
(3) Three members appointed by the Governor.

(c) Members shall serve for three-year terms. Initial terms shall commence July 1, 1986. Appointed members shall serve until their successors are appointed and qualify.

(d) Vacancies in the offices of any appointed members of the Authority shall be filled in accordance with G.S. 120-122 for the remainder of the unexpired term. No vacant office shall be included in the determination of a quorum. No vacancy in office shall impair the rights of the members to exercise all rights and to conduct official business of the Authority.

(e) The domicile of the Authority shall be the City of Raleigh.

(f) A majority of the members shall constitute a quorum for the transaction of official business. All official actions of the Authority shall require an affirmative vote of a majority of the members present and voting at any meeting.

(g) Members of the Authority shall not receive any salary for the performance of their duties as members. Appointed members may be reimbursed for such actual expenses as may be incurred for travel and subsistence in the performance of official duties and such per diem as is allowed by law for members of other State boards, commissions and committees.

(h) The Authority shall meet quarterly and may meet more frequently upon call.

(i) The Authority may delegate to one or more of its members, officers, employees or agents such powers and duties as it may deem proper. (1983, c. 789, s. 1; 1985, c. 583, s. 2; 1985 (Reg. Sess., 1986), c. 1011, s. 1; 1989 (Reg. Sess., 1990), c. 1074, s. 32(b); 1995, c. 490, s. 4.)

Subsection (b) Set Out Twice. — The first version of subsection (b) set out above is applicable until January 1, 1997. The second version of subsection (b) set out above is applicable January 1, 1997.

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment added "Pro Tempore" in subdivision (b)(2). For the applicability of this amendment, see editor's note.

§ 122D-6. General powers of Authority.

The Authority shall have all the powers necessary to give effect to and carry out the purposes and provisions of this Chapter, including the following powers in addition to all other powers granted by other provisions of this Chapter, to:

(1) Sue and be sued in its own name and in the name of any subsidiary corporation or entity which may be created pursuant to paragraph (19) of this section;

(2) Have a seal and alter the same at its pleasure;

(3) Adopt bylaws for the internal organization and government of the Authority;

(4) Adopt, promulgate and amend rules for the administration of the Chapter;

(4a) Limit the definition of agricultural loan under G.S. 122D-3(1);

(5) Make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this Chapter with any federal or State

governmental agency, public or private corporation, lending institution or other entity or person, and each and any North Carolina governmental agency is hereby authorized to enter into contracts and otherwise cooperate with the agency to facilitate the purposes of this Chapter;

(6) Accept, administer and expend donations of movable or immovable property from any source, and receive, administer and expend appropriations from the legislature and financial assistance, guarantees, insurance or subsidies from the federal or State government;

(7) Subject to the rights of holders of bonds of the Authority, to renegotiate, refinance or foreclose on any mortgage, security interest or lien; or commence any action to protect or enforce any right or benefit conferred upon the Authority by any law, mortgage, security interest, lien, contract or other agreement; and bid for and purchase property at any foreclosure or at any other sale or otherwise acquire or take possession of any property; and in any such event, the Authority may complete, administer, pay the principal of and interest on any obligation incurred in connection with such property, dispose of and otherwise deal with such property in such manner as may be necessary or desirable to protect the interest of the Authority or of holders of its bonds therein;

(8) Procure or provide for the procurement of insurance or reinsurance against any loss in connection with its property or operations, including but not limited to insurance, reinsurance or other guarantees from any federal or State governmental agency or private insurance company for the payment of any bonds issued by the Authority, or bond, notes or any other obligations or evidences of indebtedness issued or made by any subsidiary corporation or entity created pursuant to subdivision (19) of this section or by any lending institution or other entity or person, or insurance or reinsurance against loss with respect to agricultural loans, mortgages or mortgage loans, or any other type of loans, including the power to pay premiums on such insurance or reinsurance;

(9) Make, insure, coinsure, reinsure, or cause to be insured, coinsured or reinsured, agricultural loans, mortgage loans or mortgages, or any other type of loans and pay or receive premiums on such insurance, coinsurance or reinsurance, and establish reserves for losses, and participate in the insurance, coinsurance or reinsurance of agricultural loans, mortgage loans or mortgages, or any other type of loans with the federal or State government or any private insurance company;

(10) Undertake and carry out or authorize the completion of studies and analyses of agricultural conditions and needs within the State and needs relating to the promotion of agricultural exports and ways of meeting such needs, and make such studies and analyses available to the public and to the agricultural industry, and to engage in research or disseminate information on agriculture and agricultural exports;

(11) Accept federal, State or private financial or technical assistance and comply with any conditions for such assis-

tance, provided such conditions are not in conflict with the intent of this Chapter;

(12) Establish, pay and collect fees and charge in connection with its loans, deposits, insurance commitments and services, including but not limited to, reimbursement of costs of issuing bonds, origination and servicing fees, and insurance premiums;

(13) Make loans to or deposits with lending institutions and purchase or sell agricultural loans;

(14) Acquire or contract to acquire from any person, firm, corporation, municipality, federal or State agency, by grant, purchase or otherwise, movable or immovable property or any interest therein; own, hold, clear, improve, lease, construct or rehabilitate, and sell, invest, assign, exchange, transfer, convey, lease, mortgage or otherwise dispose of or encumber the same, subject to the rights of holders of the bonds of the Authority, at public or private sale, with or without public bidding;

(15) Borrow money, issue bonds, and provide for the rights of the lenders or holders thereof and purchase, discount, sell, negotiate and guarantee, insure, coinsure and reinsure note, drafts, checks, bills of exchange, acceptances, bankers acceptances, cable transfers, letters of credit and other evidence of indebtedness with or without credit enhancement devices;

(16) Subject to the rights of holders of the bonds of the Authority, consent to any modification with respect to the rate of interest, time, payment of any installment of principal or interest, security or any other term or condition of any loan, contract, mortgage, mortgage loan or commitment therefor or agreement of any kind to which the Authority is a party or beneficiary;

(17) Maintain an office at such place or places as the Authority shall determine;

(18) Serve as the beneficiary of any public trust;

(19) After reporting to the agriculture committees of the House of Representatives and the Senate, to create such subsidiary corporations or entities as may be necessary to borrow money, insure or reinsure agricultural loans, or issue bonds in the international financial market; and

(20) Purchase or participate in the purchase and enter into commitments by itself or together with others for the purchase of federally issued securities; provided that the proceeds of such securities will be utilized in accordance with the provisions of this Chapter. (1983, c. 789, s. 1; 1985 (Reg. Sess., 1986), c. 1011, s. 1; 1987, c. 112, s. 4; 1989 (Reg. Sess., 1990), c. 1000, s. 1; c. 1074, s. 32(b); 1993, c. 553, ss. 37, 38.)

§ 122D-14. Exemption from taxes.

The exercise of the powers granted by this Chapter will be in all respects for the benefit of the people of the State, for their well-being and prosperity and for the improvement of their social and economic conditions, and the Authority shall not be required to pay any tax or assessment on any property owned by the Authority under the provisions of this Chapter or upon the income therefrom.

Any obligations issued by the Authority under the provisions of this Chapter shall at all times be free from taxation by the State or any local unit or political subdivision or other instrumentality of the State, excepting inheritance or gift taxes, income taxes on the gain from the transfer of the obligations, and franchise taxes. The interest on the obligations is not subject to taxation as income. (1985 (Reg. Sess., 1986), c. 1011, s. 1; 1989 (Reg. Sess., 1990), c. 1000, s. 1; 1995, c. 46, s. 11.)

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, and applicable to obligations issued on or after that date, in the second paragraph, in the first sentence, deleted "their transfer and the income therefrom (including any profit made on the sale thereof)" following "Chapter" and added "income taxes on the gain from the transfer of the obligations, and franchise taxes" to the end, and added the last sentence.

Chapter 122E.

North Carolina Housing Trust and Oil Overcharge Act.

Sec.
122E-4. North Carolina Housing Partnership created; compensation; organization.

§ 122E-4. North Carolina Housing Partnership created; compensation; organization.

(a) The North Carolina Housing Partnership is hereby created within the North Carolina Housing Finance Agency to establish policy, promulgate rules and regulations, and oversee the operation of the Fund. The Partnership shall be constituted to coordinate private enterprise and investment with public efforts to address the serious shortage of decent, safe, and affordable housing for low and moderate income citizens of this State.

(b) **(Applicable until January 1, 1997)** The Partnership shall consist of 13 members as follows:

(1) The Executive Director of the North Carolina Housing Finance Agency shall serve ex officio;
(2) The Secretary of the Department of Commerce or his designee shall serve ex officio;
(3) The State Treasurer or his designee shall serve ex officio;
(4) In accordance with G.S. 120-121, five members shall be appointed by the General Assembly upon the recommendation of the President of the Senate, provided that one member shall be a representative of the homebuilding industry, one member shall be a low income housing advocate, and one member shall be a representative of the League of Municipalities;
(5) In accordance with G.S. 120-121, five members shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, provided that one member shall be a representative of the real estate lending industry; one member shall be a representative of a non-profit housing development corporation; and one member shall be a resident of low income housing.

The members of the Partnership shall elect one of their members to serve as Chairman for a term of one year. Seven members of the Partnership shall constitute a quorum. All members shall have the right to vote on all issues before the Partnership.

(b) **(Applicable January 1, 1997)** The Partnership shall consist of 13 members as follows:

(1) The Executive Director of the North Carolina Housing Finance Agency shall serve ex officio;
(2) The Secretary of the Department of Commerce or his designee shall serve ex officio;
(3) The State Treasurer or his designee shall serve ex officio;
(4) In accordance with G.S. 120-121, five members shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, provided that one member shall be a representative of the

§ 122E-4(b) is set out twice. See notes.

homebuilding industry, one member shall be a low income housing advocate, and one member shall be a representative of the League of Municipalities;

(5) In accordance with G.S. 120-121, five members shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, provided that one member shall be a representative of the real estate lending industry; one member shall be a representative of a non-profit housing development corporation; and one member shall be a resident of low income housing.

The members of the Partnership shall elect one of their members to serve as Chairman for a term of one year. Seven members of the Partnership shall constitute a quorum. All members shall have the right to vote on all issues before the Partnership.

(c) Members of the Partnership shall serve for three year terms. Initial terms shall begin on September 1, 1987. Appointed members shall serve until their successors are appointed and qualify.

(d) Vacancies in the offices of any appointed members shall be filled in accordance with G.S. 120-122 for the remainder of the unexpired term. No vacant office shall be included in the determination of a quorum. No vacancy in office shall impair the rights of the members to exercise all rights and conduct the official business of the Partnership.

(e) Members of the Partnership shall receive as compensation for each day spent on work for the Partnership such actual expenses as may be incurred for such travel and subsistence in the performance of official duties and such per diem as is allowed by law for other such State boards and commissions. Members shall not receive a salary for the performance of their duties as members.

(f) The Partnership shall have the following powers and duties:

(1) To promulgate rules and regulations governing all policy matters relating to the implementation of all programs for uses of the Fund and the Partnership's oversight of the Agency's administration of the Fund.

(2) To promote the development of a coordinated State low income housing plan.

(3) To obtain necessary information from other State agencies concerning housing; and

(4) To allocate monies contained in the Fund.

(g) The Partnership may appoint an Executive Director. The Executive Director shall be empowered to employ such additional professional and clerical assistance as the Partnership may deem necessary to administer the provisions of this Chapter. All employees of the Partnership, other than the Executive Director, shall be compensated in accordance with the salary schedules adopted pursuant to the State Personnel Act. The Partnership and the Agency may enter into agreements for the use of Agency staff to assist the Partnership and the provision of administrative support for the Partnership by the Agency.

(h) The Partnership shall meet quarterly and can meet more regularly upon the call of the Chairman or upon written request of four members.

(i) Members of the Partnership may not receive any direct benefit from, or participate in, the programs of the Fund. Members of the

Partnership may be employed by, or serve as a board member of, a nonprofit entity participating in a program of the Fund if the member discloses the employment or the membership in the minutes of the Partnership and does not vote on any matter pertaining to the entity's participation. This policy applies to:

(1) Individual members of the Partnership;
(2) Businesses, corporations, or partnerships owned in whole or in part by members of the Partnership; and
(3) The immediate family members of the members of the Partnership. (1987, c. 841, s. 1; 1989, c. 727, s. 223(c); c. 751, ss. 7(12), 9(c); c. 754, s. 53; 1991 (Reg. Sess., 1992), c. 959, s. 31; 1995, c. 490, s. 25.)

Subsection (b) Set Out Twice. — The first version of subsection (b) set out above is applicable until January 1, 1997. The second version of subsection (b) set out above is applicable January 1, 1997.

Editor's Note. — Session Laws 1989, c. 751, s. 16, effective July 1, 1989, repealed Session Laws 1989, c. 727, s. 218(84), which would have substituted "Environment, Health and Natural Resources" for "Natural Resources and Community Development" in this section.

Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment added "Pro Tempore" in subdivision (b)(4). For the applicability of this amendment, see editor's note.

Chapter 125.

Libraries.

Article 1.	Article 1A.
State Library Agency.	**State Depository Library System.**
Sec.	Sec.
125-11. Failure to return books.	125-11.12. [Repealed.]

ARTICLE 1.

State Library Agency.

§ 125-11. Failure to return books.

Any person who shall fail to return any book, periodical, or other material withdrawn by him from the Library shall be guilty of a Class 3 misdemeanor if he shall fail to return the borrowed material within 30 days after receiving a notice from the State Librarian that the material is overdue. The provisions of this section shall not be in effect unless a copy of this section is attached to the overdue notice by the State Librarian. (1955, c. 505, s. 3; 1993, c. 539, s. 929; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 3 misdemeanor" for "misdemeanor punishable by a fine of not more than fifty dollars ($50.00) or imprisonment for not more than 30 days" in the first sentence.

ARTICLE 1A.

State Depository Library System.

§ 125-11.12: Repealed by Session Laws 1993, c. 447, s. 1, effective July 22, 1993.

Chapter 126.

Editor's Note. — The legislation and annotations affecting Chapter 126 have been included in a recently published replacement chapter.

Chapter 127A.

Militia.

Article 2.

General Administrative Officers.

Sec.
127A-19. Adjutant General.

Article 3.

National Guard.

127A-40. Pensions for the members of the North Carolina national guard.
127A-44. North Carolina National Guard Commendation Medal.
127A-44.1. North Carolina National Guard Achievement Medal.
127A-45. North Carolina National Guard State Active Duty Award.
127A-45.2A. North Carolina National Guard Outstanding Unit Award.
127A-45.5A. Other awards.
127A-50.1. Military judges.

Article 5.

State Defense Militia.

127A-81. State defense militia cadre.

Article 8.

Pay of Militia.

Sec.
127A-106. Paid by the State.

Article 10.

Care of Military Property.

127A-131. Unlawful conversion or willful destruction of military property.

Article 12.

General Provisions.

127A-151. Organizing company without authority.
127A-152. Placing name on muster roll wrongfully.

Article 15.

North Carolina National Guard Tuition Assistance Act of 1975.

127A-192. Definitions.
127A-193. Benefit.
127A-194. Eligibility.

ARTICLE 2.

General Administrative Officers.

§ 127A-19. Adjutant General.

The military head of the militia shall be the Adjutant General who shall hold the rank of major general. The Adjutant General shall be appointed by the Governor in his capacity as commander in chief of the militia, in consultation with the Secretary of Crime Control and Public Safety, and shall serve at the pleasure of the Governor. No person shall be appointed as Adjutant General who has less than five years' commissioned service in an active status in any component of the armed forces of the United States. The Adjutant General, while holding such office, may be a member of the active national guard or naval militia.

Subject to the approval of the Governor and in consultation with the Secretary, Department of Crime Control and Public Safety, the Adjutant General may appoint a deputy adjutant general for Army National Guard, an assistant adjutant general for Army National Guard, and an assistant adjutant general for Air National Guard, each of whom may hold the rank of brigadier general and who shall serve at the pleasure of the Governor. The assistant adjutant general for Army National Guard shall also serve in the military position of Brigadier General — Line, Deputy, State Area Command (STARC) Commander. The Adjutant General may also employ such staff members and other personnel as may be authorized by the Secretary and funded. (1917, c. 200, s. 14; C.S., s. 6802; 1925, c. 54; 1939, c. 14; 1949, c. 1225; 1959, c. 218, s. 2; 1973, c. 620, s. 9; 1975, c. 604, s. 2; 1977, c. 70, s. 2; 1979, c. 481; 1995, c. 122, s. 1.)

Effect of Amendments. — The 1995 amendment, effective May 30, 1995, in the second paragraph, in the first sentence inserted "an assistant adjutant general for Army National Guard" preceding "and an assistant adjutant general" and substituted "each" for "both" preceding "of whom may hold"; added the second sentence in the second paragraph; and made stylistic changes.

ARTICLE 3.

National Guard.

§ 127A-40. Pensions for the members of the North Carolina national guard.

(a) Every member and former member of the North Carolina national guard who meets the requirements hereinafter set forth shall receive, commencing at age 60, a pension of fifty dollars ($50.00) per month for 20 years' creditable military service with an additional five dollars ($5.00) per month for each additional year of such service; provided, however, that the total pension shall not exceed one hundred dollars ($100.00) per month. The requirements for such pension are that each member shall:

(1) Have served and qualified for at least 20 years' creditable military service, including national guard, reserve and active duty, under the same requirement specified for entitlement to retired pay for nonregular service under Chapter 67, Title 10, United States Code.

(2) Have at least 15 years of the aforementioned service as a member of the North Carolina national guard.

(3) Have received an honorable discharge from the North Carolina national guard.

(b) Payment to a retired member of the North Carolina national guard under the provisions of this section will cease at the death of the individual and no payment will be made to beneficiaries or to the decedent's estate.

(c) No individual receiving retired pay as a result of length of service, age or physical disability retirement from any of the regular components of the armed forces of the United States will be eligible for benefits under this section.

(d) Nothing contained in this section shall preclude or in any way affect the benefits that an individual may be entitled to from State, federal or private retirement systems.

(e) Repealed by Session Laws 1989, c. 792, s. 2.3, effective for taxable years beginning on or after January 1, 1989.

(f) The Secretary of Crime Control and Public Safety shall determine the eligibility of guard members for the benefits herein provided and shall certify those eligible to the State Treasurer. In addition, the Department of Crime Control and Public Safety shall, on and after July 1, 1983, provide the Department of State Treasurer with an annual census population, by age and the number of years of creditable service, for all former members of the National Guard in receipt of a pension as well as for all active members of the National Guard who are not in receipt of a pension and who have seven and more years of creditable service. The Department of Crime Control and Public Safety shall also provide the State Treasurer a census population of all former members of the National Guard who are not in receipt of a pension and who have 15 and more years of creditable service. The Department of State Treasurer shall make pension payments to those persons certified from the North Carolina National Guard Pension Fund, which shall include general fund appropriations made to and transferred from the Department of Crime Control and Public Safety. The Department of State Treasurer shall have performed an annual actuarial valuation of the fund and shall have the financial responsibility for maintaining the fund on a generally accepted actuarial basis. The Department of Crime Control and Public Safety shall provide the Department of State Treasurer with whatever assistance is required by the State Treasurer in carrying out his financial responsibilities.

(g) The provisions of this section shall apply to any member or former member of the North Carolina national guard who is qualified for the above retirements with eligibility of such person commencing at age 60 or July 1, 1974, whichever is the later date.

(h) If, for any reason, the North Carolina National Guard Pension Fund shall be insufficient to pay in full any pension benefits, or other charges, then all benefits or payments shall be reduced pro rata, for as long as the deficiency in amount exists. No claim shall accrue with respect to any amount by which a pension or benefit payment shall have been reduced.

(i) Pensions for members of the North Carolina National Guard shall be subject to future legislative change or revision. (1973, c. 625, s. 1; c. 1241, ss. 1-3; 1975, c. 604, s. 2; 1977, c. 70, s. 2; 1979, c. 870; 1983, c. 761, ss. 250, 251; 1989, c. 792, s. 2.3.)

§ 127A-44. North Carolina National Guard Commendation Medal.

There is hereby created the North Carolina National Guard Commendation Medal which shall be of appropriate design, and a ribbon, together with a rosette or other device to be worn in lieu thereof. This medal and appurtenances thereto shall be of a design approved by the Governor or his designated representative. The Adjutant General of North Carolina or his designated representative, who shall not be below the rank of colonel (O-6), may award this medal. Any member or former member of the armed forces discharged under honorable conditions, who distinguishes himself by his example or the performance of a specific act in behalf of the North Carolina National Guard, is eligible for this award. (1975, c. 604, s. 2; 1977, c. 230, s. 3; 1991, c. 367, s. 2.)

§ 127A-44.1. North Carolina National Guard Achievement Medal.

There is hereby created the North Carolina National Guard Achievement Medal which shall be of appropriate design, and a ribbon, together with a rosette or other device to be worn in lieu thereof. This medal and appurtenances thereto shall be of a design approved by the Governor or his designated representative. The Adjutant General of North Carolina or his designated representative, who shall not be below the rank of lieutenant colonel (O-5), may award this medal. Any member or former member of the armed forces discharged under honorable conditions, who distinguishes himself by his example or the performance of a specific act in behalf of the North Carolina National Guard, is eligible for this award. (1991, c. 367, s. 3.)

Editor's Note. — Session Laws 1991, c. 367, s. 6, made this section effective October 1, 1991.

§ 127A-45. North Carolina National Guard State Active Duty Award.

There is hereby created the North Carolina National Guard State Active Duty Award which shall be a ribbon of appropriate design. This ribbon and appurtenances thereto shall be of a design approved by the Governor or his designated representative. The Adjutant General of North Carolina may present this ribbon to members of the North Carolina National Guard who, by order of the Governor, satisfactorily serve a tour of State active duty. To be worthy of this award, the nature of the tour of State active duty must have been a distinct and notable service to the State or to a community, as determined by the Adjutant General of North Carolina. On or after July 1, 1991, this award may also be presented to active guard personnel and reserve personnel who satisfactorily participate in tours of State active duty. (1973, c. 966, s. 2; 1975, c. 604, s. 2; 1991, c. 367, s. 1.)

§ 127A-45.2A. North Carolina National Guard Outstanding Unit Award.

There is hereby created the North Carolina National Guard Outstanding Unit Award which shall be a streamer, a unit emblem, and a certificate, all of appropriate design as approved by the Governor or his designated representative. The Adjutant General may present this citation to any unit of the North Carolina National Guard distinguishing itself through meritorious achievement or service to the State of North Carolina. The required meritorious service, while of a lesser degree than that required for the award of the North Carolina National Guard Meritorious Unit Citation, must nevertheless have been accomplished with distinction. (1991, c. 367, s. 4.)

Editor's Note. — Session Laws, 1991, c. 367, s. 6, made this section effective October 1, 1991.

§ 127A-45.5A. Other awards.

The Adjutant General may, from time to time, create such other awards and medals to recognize meritorious service or outstanding achievement. The creation of such awards and medals shall be approved by the Governor. The Governor or his designee shall approve the design of such awards and medals. (1991, c. 367, s. 5.)

Editor's Note. — Session Laws, 1991, c. 367, s. 6, made this section effective October 1, 1991.

§ 127A-50.1. Military judges.

The Adjutant General shall appoint military judges to preside over courts-martial of the National Guard not in federal service. Minimum requirements for appointment as a military judge shall be:

(1) Licensed to practice law in this State or certified as a military judge by the Judge Advocate General of the Army, Air Force, Navy, or Marines;
(2) Designation as a judge advocate by The Judge Advocate General of the Army, Navy, Air Force, or Marines; and
(3) Membership in the North Carolina National Guard, the National Guard of another state, or the active or reserve components of any of the military services. (1987, c. 649, s. 1.)

Editor's Note. — Session Laws 1987, c. 649, s. 2 made this section effective upon ratification. The act was ratified July 21, 1987.

Article 5.

State Defense Militia.

§ 127A-81. State defense militia cadre.

(a) The Governor is authorized: to organize and regulate part of the unorganized militia as a State defense militia cadre in units or commands which he may deem necessary to provide a cadre for an active State defense militia; to prescribe regulations for the maintenance of the property and equipment of the cadre, for the exercise of its discipline, and for its training and duties.

(b) The cadre shall be designated the "North Carolina State Defense Militia Cadre" and shall be composed of a force of officers and enlisted personnel raised by appointment of the Governor, or otherwise, as may be provided by law. The Secretary of the Department of Crime Control and Public Safety may reimburse cadre members for expenses actually incurred, not to exceed the amount appropriated and authorized for such purposes by the General Assembly.

(c) The Governor's authority hereunder shall not be subject to regulations prescribed by the Secretary of Defense. Age and membership requirements for the State defense militia generally, as set forth in G.S. 127A-80 shall apply. The training of the cadre need not be in accordance with training regulations issued by the Department of Defense. The provisions of G.S. 127A-80 (c), (d), (g), (h) and (i) shall also apply to cadres.

(d) The total authorized strength of the cadre, its authorized officer and enlisted strength, the composition of each of its units or commands, and the allocation of cadre units or commands among the counties, cities, and towns of the State, shall be as prescribed by the Governor in suitable regulations enforced through the Adjutant General, or as otherwise provided by law.

(e) The duties of the State defense militia cadre shall be as ordered and directed by the Governor from time to time, or in regulations, and may include authority to take charge of armories and other military installations and real properties used by the North Carolina national guard, together with such other property as the regulations may provide, when and if the North Carolina national guard, or any part thereof, may be inducted into the service of the United States, or, for any extended period of time, may be absent on any duty from its home station. In addition, the cadre shall have duties appropriate to the organization, maintenance, and training of a military cadre to act as a nucleus for the organization of an active State defense militia whenever the necessity may arise. (1963, c. 1016, s. 1; 1975, c. 604, s. 2; 1977, c. 70, s. 2; 1983, c. 314, s. 4; 1991 (Reg. Sess., 1992), c. 1030, s. 35.)

ARTICLE 8.

Pay of Militia.

§ 127A-106. Paid by the State.

When the militia or any portion thereof shall be ordered by the Governor into State service, the pay, subsistence, transportation and other necessary expenses incident thereto shall be paid by the State Treasurer, upon the approval of the Governor. (1917, c. 200, s. 52; C.S., s. 6866; 1975, c. 604, s. 2; 1993, c. 257, s. 12.)

ARTICLE 10.

Care of Military Property.

§ 127A-131. Unlawful conversion or willful destruction of military property.

(a) If any person shall willfully or wantonly destroy or injure, willfully retain after demand made or otherwise convert to his own use any property of the State or of the United States issued for the purpose of arming or equipping the militia of the State or if any person shall purchase any property of the State or of the United States knowing it to be unlawfully obtained, he shall be guilty of a Class 1 misdemeanor.

(b) Any person, firm or corporation receiving in pledge or buying from any other person, firm or corporation for the purpose of resale any goods, to include arms, ammunition, explosives, equipment, clothing, supplies and materials, which may reasonably be thought to be the property of the armed forces of the United States and their reserve components or of the militia of the State of North Carolina, shall keep a register and shall enter therein a true and accurate record of each purchase, showing the name, social security number and address of the person from whom purchased, the name and address of the firm or corporation from whom purchased, together with the amount paid for each item or lot of small items, the date of purchase, the serial numbers of all items bearing serial numbers, and any other marks, brands or descriptions which will serve to identify the items purchased. The register shall be at all times open to the inspection of the public. Any person, firm or corporation failing to comply with this provision shall be guilty of a Class 1 misdemeanor; and any person, firm or corporation making a false entry in such register shall be guilty of a Class 1 misdemeanor. (1876-7, c. 272, s. 19; Code, s. 3274; Rev., ss. 3536, 3537; C.S., ss. 6881, 6882; 1959, c. 218, s. 25; 1963, c. 1019, s. 6; 1975, c. 604, s. 2; 1993, c. 539, s. 936; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 1 misdemeanor" for "misdemeanor and shall be punished as provided in G.S. 14-3" in subsection (a), and twice inserted "Class 1" preceding "misdemeanor" in the last sentence of subsection (b).

ARTICLE 12.

General Provisions.

§ 127A-151. Organizing company without authority.

If any person shall organize a military company, or drill or parade under arms as a military body, except under the militia laws and regulations of the State, or shall exercise or attempt to exercise the power or authority of a military officer in this State, without holding a commission from the Governor, he shall be guilty of a Class 1 misdemeanor. (1893, c. 374, s. 38; Rev., s. 3538; C.S., s. 6894; 1975, c. 604, s. 2; 1993, c. 539, s. 937; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 1" preceding "misdemeanor".

§ 127A-152. Placing name on muster roll wrongfully.

If any officer of the militia of the State shall knowingly or willfully place, or cause to be placed, on any muster roll the name of any person not regularly or lawfully enlisted, or the name of any enlisted man who is dead or who has been discharged, transferred, or has lost membership for any cause whatsoever, or who has been convicted of any infamous crime, he shall be guilty of a Class 1 misdemeanor. (1893, c. 374, s. 33; Rev., s. 3539; C.S., s. 6895; 1975, c. 604, s. 2; 1993, c. 539, s. 938; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 1" preceding "misdemeanor".

ARTICLE 15.

North Carolina National Guard Tuition Assistance Act of 1975.

§ 127A-192. Definitions.

(a) "Business or Trade School". — Any school within the State of North Carolina which is licensed by the State Board of Education and listed by that Board as an approved private business school or an approved private trade school.

(b) "Private Educational Institutions". — Any junior college, senior college or university which is operated and governed by private interests not under the control of the federal, State or any local government, which is located within and licensed by the State of North Carolina, which does not operate for profit, whose curriculum is primarily directed toward the awarding of associate, baccalaureate or graduate degrees, which agrees to the applicable administration and funding provisions of this Article.

(c) "Secretary". — The Secretary of Crime Control and Public Safety or his designee.

(d) "State Educational Institutions". — Any of the constituent institutions of the University of North Carolina, or any community college operated under the provisions of Chapter 115D of the General Statutes of North Carolina.

(e) "Academic Year". — Any period of 365 days beginning with the first day of enrollment for a course of instruction. (1975, c. 917, s. 4; 1977, c. 70, s. 2; c. 228, s. 1; 1987, c. 564, s. 24.)

§ 127A-193. Benefit.

The benefit provided under this Article shall consist of a monetary educational assistance grant not to exceed one thousand dollars ($1,000) per academic year to qualifying members of the North

Carolina national guard. Benefits shall be payable for a period of one academic year at a time, renewable at the option of the Secretary for a maximum of four thousand dollars ($4,000). (1975, c. 917, s. 5; 1977, c. 228, s. 2; 1983 (Reg. Sess., 1984), c. 1034, ss. 99, 100; 1993 (Reg. Sess., 1994), c. 769, s. 22.3.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 1, 1994, substituted "one thousand dollars ($1,000)" for "five hundred dollars ($500.00)" in the first sentence and "four thousand dollars ($4,000)" for "two thousand dollars ($2,000)" in the second sentence.

§ 127A-194. Eligibility.

(a) Active members of the North Carolina national guard who are enrolled or who shall enroll in any business or trade school, private educational institution or State educational institution shall be eligible to apply for this tuition assistance benefit: Provided, that the applicant has a minimum obligation of two years remaining as a member of the national guard from the end of the academic period for which tuition assistance is provided or that the applicant commit himself or herself to extended membership for at least two additional years from the end of said academic period.

(b) This tuition assistance benefit shall be applicable to students in the following categories:

(1) Students seeking to achieve completion of their secondary school education at a community college [or technical institute].
(2) Students seeking trade or vocational training or education.
(3) Students seeking to achieve a two-year associate degree.
(4) Students seeking to achieve a four-year baccalaureate degree.
(5) Students seeking to achieve a graduate degree. (1975, c. 917, s. 6; 1977, c. 228, ss. 3, 4.)

Editor's Note. — Session Laws 1987, c. 564, s. 12, effective July 6, 1987, directed that "community college" be substituted for "community college or technical institute" in subdivision (b)(1) of § 127-194. At the direction of the Revisor of Statutes, the phrase "or technical institute" has been placed in brackets at the end of subdivision (b)(1) of this section, which was apparently the section intended to be amended by the 1987 act.

Chapter 127B.

Military Affairs.

Article 1.

Military Property Sales Facilities.

Sec.
127B-5. Perjury; punishment.
127B-7. Penalties.

Article 2.

Discrimination Against Military Personnel.

Sec.
127B-15. Penalties.

ARTICLE 1.

Military Property Sales Facilities.

§ 127B-5. Perjury; punishment.

Any person who shall willfully commit perjury in any application for a permit pursuant to this Article shall be guilty of a Class 1 misdemeanor. (1985, c. 522, s. 1; 1993, c. 539, s. 939; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 1" preceding "misdemeanor".

§ 127B-7. Penalties.

Any dealer who violates the provisions of this Article shall be guilty of a Class 2 misdemeanor. In addition, any dealer convicted of violating this Article shall be ineligible for a dealer's permit for a period of three years from the date of conviction. Each violation shall constitute a separate and distinct offense. (1985, c. 522, s. 1; 1993, c. 539, s. 940; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 2 misdemeanor" for "misdemeanor and upon conviction shall be fined not more than five hundred dollars ($500.00) or imprisoned for not more than six months, or both" in the first sentence.

ARTICLE 2.

Discrimination Against Military Personnel.

§ 127B-14. Employer discrimination prohibited.

Legal Periodicals. — For article, "North Carolina Employment Law After Coman: Reaffirming Basic Rights in the Workplace," see 24 Wake Forest L. Rev. 905 (1989).

§ 127B-15. Penalties.

Any person who violates the provisions of this Article shall be deemed guilty of a Class 2 misdemeanor. Each violation shall constitute a separate and distinct offense. (1985, c. 522, s. 1; 1993, c. 539, s. 941; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 2 misdemeanor" for "misdemeanor and upon conviction shall be fined not more than five hundred dollars ($500.00) or imprisoned for not more than six months, or both" in the first sentence.

Legal Periodicals. — For article, "North Carolina Employment Law After Coman: Reaffirming Basic Rights in the Workplace," see 24 Wake Forest L. Rev. 905 (1989).

Chapter 128.

Editor's Note. — The legislation and annotations affecting Chapter 128 have been included in a recently published replacement chapter.

Chapter 129.

Public Buildings and Grounds.

Article 7.

North Carolina Capital Building Authority.

Sec.
129-40 through 129-49. [Repealed.]

ARTICLE 7.

North Carolina Capital Building Authority.

§§ 129-40 through 129-49: Repealed by Session Laws 1987, c. 71, s. 2, effective April 14, 1987.

Cross References. — As to the State Building Commission, see § 143-135.25 et seq.

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

November 1, 1995

I, Michael F. Easley, Attorney General of North Carolina, do hereby certify that the foregoing 1995 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Department of Justice of the State of North Carolina.

MICHAEL F. EASLEY

Attorney General of North Carolina